

# Employment Law Alert: FLSA Overtime Regulations

## U.S. Department of Labor Proposes Significant Changes to FLSA Overtime Regulations

March 25, 2019

On March 7, 2019, the **U.S. Department of Labor** announced a long-awaited Notice of Proposed Rulemaking (“NPRM”) that proposes new regulations that relate to overtime and minimum wage exemptions under the Fair Labor Standards Act (“FLSA”).

The FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hours worked, and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at a “salary level” of not less than a standard established by Department of Labor regulations. Since 2004, the salary level standard set by the Department of Labor regulations has been \$455 per week (or \$23,660 annually). The 2004 regulations also contain special exemption rules for “highly-compensated” workers who are paid total annual compensation of \$100,000 or more.

The NPRM proposes to update the salary level standard set in its 2004 regulations to reflect growth in wages and salaries. Specifically, the Department of Labor proposes:

- increase the standard salary level to \$679 per week (the equivalent of \$35,308 annually for a full-year worker), up from the currently enforced level of \$455 per week;
- increase the total annual compensation requirement needed to exempt highly compensated employees to \$147,414 annually, up from the currently enforced level of \$100,000 annually; and
- allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the standard salary level, provided these payments are made on an annual or more frequent basis.

If finalized as proposed, the Department of Labor estimates that 1.3 million currently exempt employees would, without some intervening action by their employers, become nonexempt.

There is a 60-day notice and comment period that may result in modifications to regulations proposed in the NPRM. It is expected that finalized regulations will take effect in January 2020. Morse’s Employment Law Group will continue to monitor and provide updates on this important development.

For more information, please contact **Matt Mitchell**.