

DOL's Proposed FLSA Regulations: What Employers Need to Know

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Today's Presenters



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Today's Discussion

- Proposed changes to the salary level test
- Changes to the job duties test?
- Recommendations for employers in response
- Special issues for government contractors

FLSA Introduction

- Statutory law and extensive federal regulations
 - Regulations last updated in 2004
 - 2014 directive to “modernize and streamline”
- Exemption generally require the satisfaction of three separate tests
 - Salary level test
 - Salary basis test
 - Job duties tests

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- 60-day “notice and comment” period
- Proposals, subject to change
- Key points
 - Salary level test going up
 - DOL solicits comments on the duties tests

Proposed Threshold for Salary Level Test

- New threshold: approx. \$50,000
 - 40th percentile of full-time salaried employees
 - Currently: \$47,892. DOL projects \$50,440 by Q1 2016
- Calculating the salary level
 - Guarantee of \$970/week
 - Does not include benefits/fringes, bonuses, commissions
 - DOL invites comments
- Effective date – anticipated in 2016

Proposed Threshold for Salary Level Test

- Indexing: the “salary level” threshold will fluctuate yearly
- Regulations also modify HCE threshold
 - Set at 90th percentile of weekly earnings for all full-time salaried employees
 - Proposed amount is currently \$122,148
- Part-time employees subject to timekeeping requirements

Job Duties Tests

- DOL solicits comments
- Moving target: no proposed changes, but DOL reserves the right to change the duties tests in the final rule
- DOL's concerns
 - Percentage of time on nonexempt tasks
 - Constituencies complaining of lack of clarity
- DOL to provide more examples

What Employers Should Be Doing Now

- Job classification audits – prepare for changes
 - Salary adjustments
 - Other changes in compensation
 - Changing duties
- Training on “managing to non-exempt status”
 - What constitutes “work”
 - Timekeeping requirements and time reporting

What Employers Should Be Doing Now

- Employee morale issues
- Oddball situations
- Financial consequences
 - OT costs
 - Lowering salaries
 - Budgeting

Special Implications for Government Contractors

- Fair Pay Rules
 - Wage-hour claims are reportable events
- Higher stakes in classification disputes

Relevant Links

- DOL website on NPRM
 - <http://www.dol.gov/whd/overtime/NPRM2015/>
- Crowell & Moring Client Alert:
 - <http://www.crowell.com/NewsEvents/All/Proposed-FLSA-Regulations-More-Than-Double-Salary-Threshold-for-Exempt-Employees>

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