Labor & Employment @lert

August 2023

DOL Proposes Rule to Extend Overtime Pay Protection

On August 30, the U.S. Department of Labor (DOL) proposed a new rule that would extend overtime pay protection to an additional approximately 3.6 million salaried workers. According to the DOL, the proposed rule seeks to enhance and expand existing labor regulations by "ensur[ing] that more workers receive extra pay when they work long hours."

Currently, under the Fair Labor Standards Act, employees who earn more than $35,568 per year, or $684 per week, are exempt from receiving overtime pay when they work more than 40 hours per week. The proposed rule would raise the current overtime threshold to $55,068 per year, or $1,059 per week, and expand coverage to a larger portion of the workforce across more industries including retail, manufacturing, hospitality, and education. In addition to "restor[ing] and extend[ing] overtime protections to low-paid salaried workers" who work more than 40 hours per week but are ineligible for traditional overtime protections, the proposed rule would also include:

- ***An automatic updating mechanism*** to ensure that the salary threshold is updated every three years to reflect current earnings data.
- ***Better identification*** of which executive and administrative workers should be classified as exempt from receiving overtime pay.
- ***Restoration of overtime protections*** in U.S. territories.

The proposed rule could significantly impact the labor market and broader economy. Workers in entry- or mid-level positions would see an increase in their take-home pay as they become eligible for overtime compensation. Supporters of the rule also argue that it would encourage better work-life balance and reduce overwork. Employers, on the other hand, may face increased labor costs and potential reductions in worker hours. Employers should prepare to consult with counsel to assess and adjust their compensation structures to ensure compliance if the new rule is enacted. For example, employers may consider raising salaries to meet the new threshold, converting salaried positions to hourly ones, and reviewing and modifying employee schedules to manage overtime hours more effectively.

Once the proposal is formally published in the *Federal Register,* there will be a 60-day period for public comment. We will continue to monitor this proposed rule as it navigates public comment, revisions, and potential legal challenges.

FOR MORE INFORMATION

For more information, please contact:

M. Scott Young
513.352.6617
202.263.4134
Scott.Young@ThompsonHine.com

Rudi Julius
404.541.2962
Rudi.Julius@ThompsonHine.com

or any member of our Labor & Employment group.