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Department of Labor’s Proposed Rule Change Would Impact Overtime Eligibility – How Pennsylvania Employers Can Prepare

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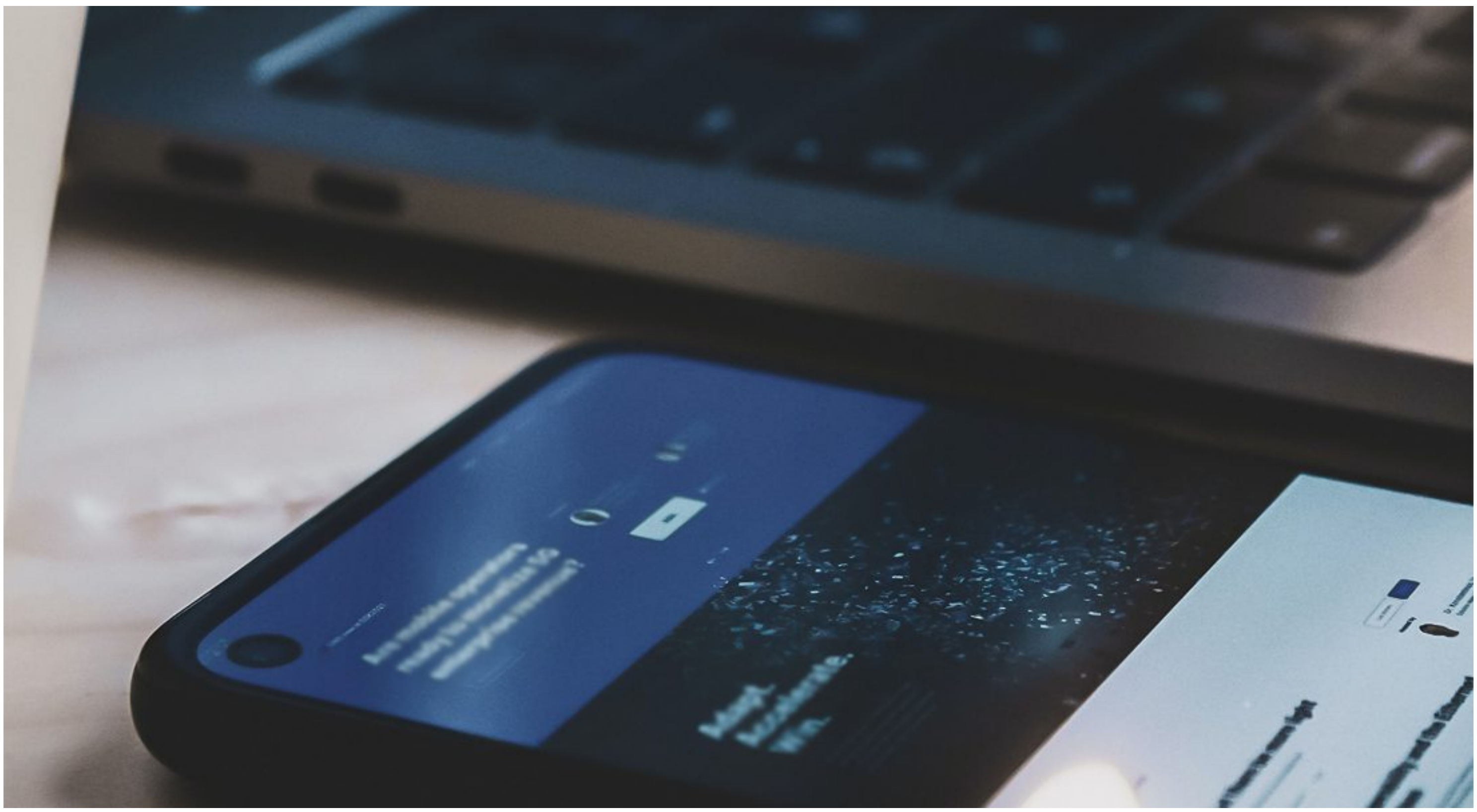

The U.S. Department of Labor (DOL) recently issued its long-awaited proposed rule that would raise the minimum annual salary required for workers — executive, administrative and professional — to qualify for the Fair Labor Standards Act (FLSA) white-collar exemption from $23,660 to $35,308 annually, or $679 per week. The change is expected to formally take effect in January 2020 and would impact more than 1 million employees across the country.

The new minimum salary threshold represents a middle ground between the current $23,660 threshold, in effect since 2004, and the $47,476 threshold proposed by former President Obama's administration. Days before the Obama-era rule was to go into effect on December 1, 2016, a U.S. District Court in Texas issued a nationwide injunction. Litigation continued until November 2017 when the Fifth Circuit Court of Appeals placed the matter on hold while President Trump's administration undertook further rulemaking.

The new DOL proposed rule would make no change to the duties test, another element of the existing rule designed to ensure that only legitimate executive, administrative and professional employees qualify as exempt. Employers would be able to apply certain employee nondiscretionary bonuses and incentive payments such as commissions for up to 10 percent of an employee's salary level. Additionally, unlike the Obama-era rule, the minimum salary threshold would not automatically update every three years. Rather, the DOL proposes updating the salary level every four years and only after notice and public comment periods.

The DOL proposed rule would also raise the salary threshold for highly compensated employees from $100,000 to $147,414, which is about $13,000 more than what the Obama administration had proposed. However, this change would not affect Pennsylvania employers since this exemption is unavailable for those companies that employ individuals in the Commonwealth.

The DOL's proposed rule is not the only change for which Pennsylvania employers should prepare. In June, the Pennsylvania Department of Labor and Industry (L&I) proposed updating the minimum salary threshold for white-collar exemptions under Pennsylvania's Minimum Wage Act to $39,832 as early as 2021. The announcement by the DOL will likely impact the Pennsylvania L&I's proposed rule, but the scope and timing of any changes remains to be seen.

Employers should begin preparing now for the DOL's proposed rule to go into effect by conducting an internal audit identifying employees who may be affected and evaluating potential reclassification of those employees. Employers should also get a lead on developing communication strategies for announcing any reclassifications and preparing to implement training for newly-reclassified employees.

Saxton & Stump's attorneys Richard Hackman or Stephen J. Fleury, Jr. are available to discuss how your business may be impacted by these developing changes and how our Labor and Employment Group can help devise a cost-effective preparation strategy appropriate for your company's specific needs.

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