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# NIEHAUS WISE & KALAS

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A T T O R N E Y S A T L A W

**Proposed Regulations Expand Overtime  
Eligibility to Currently Exempt Employees**

The Wage and Hour Division of the Department of Labor (“WHD”) has proposed new regulations increasing the salary level required to exempt certain executive, administrative and professional employees from overtime requirements. Currently, employees making more than \$23,660 and performing exempt duties do not need to be paid overtime. The WHD proposes that this minimum salary level be more than doubled to \$50,440 in 2016 to exempt these employees from overtime.

The proposed regulations, which will be subject to public notice and comment for the next 60 days, allow the selection of one of two methods for increasing the salary threshold going forward. The amount should either track the 40<sup>th</sup> percentile of earnings for full-time salaried workers in the U.S. (projected to be \$50,440 for 2016) or start at that level and increase each year thereafter based on the Consumer Price Index for all urban consumers (“CPI-U”). Additionally, the WHD proposes to increase the salary threshold for highly compensated employees under the Fair Labor Standards Act to equal the 90<sup>th</sup> percentile of earnings for full-time salaried workers in the U.S. (currently \$122,148) from its current threshold of \$100,000. Again, the proposal suggests increasing this amount going forward tracking the 90<sup>th</sup> percentile of earnings or the CPI-U. The WHD is also seeking comments about the duties test associated with the executive, administrative and professional exemptions. This may be the last opportunity for employers to comment on the proposed regulations.

Implementation of these new regulations is not anticipated prior to 2016. However, that could change depending on the results of the notice and comment period. Meanwhile, employers should begin to consider which employees these new thresholds will affect. For example, mid-level managers or exempt employees located in regions where salary levels are less competitive could easily be earning a salary below \$50,440. Once identified, employers will want to analyze whether it will be more beneficial to raise an individual salary above the threshold or transition the employee to non-exempt status and pay overtime. In some situations, the hours might be so significant that overtime would be more costly than raising the individual’s salary over \$50,440. Of course, salary alone does not establish exempt status; an employee’s primary duty must also

be to perform exempt job responsibilities. For other employees, limiting them to a 40-hour or less workweek will be appropriate and overtime will not be an issue.

Transitioning employees from exempt to nonexempt status must be done with planning and care. Many individuals perceive being exempt as a coveted status within the company and envision hourly work as less meaningful. Employers will not want to make the transition too hastily and should do so in conjunction with careful messaging about the value of the employee's work.

NWK can assist with all issues surrounding exemption qualification and any necessary transition to nonexempt status. We can also assist clients who might want to submit comments to the WHD regarding the proposed regulations.