

More than a thousand parties have already submitted comments on the Department of Labor's (DOL) proposed changes to the rules concerning who is eligible to receive overtime compensation. Now is your chance to help shape the final rules, and we can help.

The DOL published the [Notice of Proposed Rule Making](#) in the Federal Register on July 6, starting a 60-day notice and comment period on the proposed changes. Written comments are due on or before September 4, 2015 and employers significantly impacted by the changes should strongly consider submitting comments.

Proposed changes include:

- increasing the current minimum salary requirement for the executive, administrative, professional and computer employee exemptions from \$455 per week (\$23,660 per year) to \$970 per week (\$50,440 per year), with automatic increases
- increasing the threshold for exemption as a "highly compensated employee" from \$100,000 to \$122,148

Comments Requested

In addition to requesting comments on the substantial increase to the minimum salary threshold for overtime exemption (more than double the present threshold), a few of the key areas in which the DOL is also seeking comments include:

1. Methodology for Annual Updating of Minimum Salary Levels

There are two proposed methodologies under consideration for indexing regular increases to the threshold salary amounts:

1. Tie the exemption threshold to the 40th percentile of full-time employee income for the white-collar exemptions and the 90th percentile of earnings for the highly-compensated employee exemption; or
2. Adjust the minimum salary amounts based on changes in inflation, as measured by the Consumer Price Index

2. Changes to "Duties" Tests?

Although the proposed rule does not contain any changes to the current duties test – which, along with the salary basis test, determine whether an employee is exempt – the DOL also is seeking comments on whether changes to the duties tests are appropriate. For example, the DOL is requesting comments concerning whether a time-based, quantitative task test similar to that applied under

California law should apply (instead of the qualitative, "most significant duties" test currently applied under the FLSA). We believe that this change is unnecessary and should not be made, and also believe that the DOL should use this opportunity to set forth more specific examples of occupations likely to meet (or not meet) the duties tests under the white collar exemptions.

3. Inclusion of Bonus Payments Toward Salary Requirement

Although the proposed rules do not include a provision requiring that certain guaranteed bonuses be included towards the minimum salary amount, the DOL is specifically asking for input on whether such a provision should be provided in the final rule. We believe that employers should be permitted to count quarterly and annual bonuses paid to employees – whether discretionary or guaranteed – toward the minimum salary requirement.

You can read the [proposed rule here](#). If you are interested in providing any comments on the rule, you can submit them on the [Regulations.gov website](#), or by sending an email with your comments to FLSAcomments@squirepb.com and a Squire Patton Boggs L&E team member will submit reach out to you to coordinate submission of your comments.

Squire Patton Boggs is closely monitoring all relevant developments related to the proposed regulations. We encourage all employers to have their voice heard concerning how these regulations will impact you and your business.

Contacts

Jill S. Kirila

Partner, Columbus, Miami
T +1 614 365 2772
E jill.kirila@squirepb.com

Daniel B. Pasternak

Partner, Phoenix
T +1 602 528 4187
E daniel.pasternak@squirepb.com

Michael W. Kelly

Partner, San Francisco, Palo Alto
T +1 415 954 0375
E michael.kelly@squirepb.com