

# Meltzer Lippe LABOR & EMPLOYMENT WATCH

March 20, 2019



## LABOR & EMPLOYMENT PRACTICE GROUP

*Meltzer Lippe is home to a large, experienced Labor and Employment Law Practice Group.*

*We are an integral component to the human resource chain and the first stop before taking action that impacts the employee – employer relationship.*

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## PROPOSED OVERTIME EXEMPTION RULE

On March 7, 2019, the United States Department of Labor ("USDOL") unveiled its new proposed overtime exemption rule (the "Proposed Rule"). The Proposed Rule increases the minimum salary threshold required for employees to qualify for the Fair Labor Standards Act's ("FLSA") "white collar" exemptions from \$455 per week to \$679 per week (or \$35,308 annually). According to the USDOL, the rule will likely take effect in January of 2020.

The Proposed Rule follows a controversial Obama Administration proposal which would have increased the threshold to \$913 per week (or \$47,476 annually). This proposal was met with significant opposition and was ultimately enjoined before it took effect. The Proposed Rule effectively rescinds the Obama-era proposal.

In addition to increasing the weekly salary threshold for the "white collar" exemptions, the Proposed Rule also increases the threshold for the "highly-compensated" exemption. Currently, the minimum salary level required to claim the highly-compensated exemption is \$100,000. The Proposed Rule increases the minimum salary level to \$147,414. Notably, this figure is actually higher than the Obama-era Highly Compensated proposed rule, which attempted to set the annual compensation requirement at \$134,004.

Employers now have sixty days to submit comments on the Proposed Rule to the USDOL. The USDOL will review those comments and publish a final version of the Proposed Rule which will take effect January 2020.

Regardless of when the Proposed Rule takes effect, employers must begin the process of identifying their current "exempt" employees and reconsider their classifications. Although each employer has different needs, options for compliance with the Proposed Rule include increasing an employee's salary to meet the new threshold, or converting the employee to non-exempt hourly status (with due consideration for the potential overtime payments which may be incurred as a result of same). Finally, as the FLSA's thresholds and standards are often different (and lower) than state wage and hour rules, employers must ensure their wage and hour practices (including meeting salary thresholds) are in compliance with all the state rules/regulations in which they operate.

<sup>1</sup> The USDOL did not propose any changes to the "duties" test, which also must be satisfied, when an employer seeks to properly pay its employees a salary pursuant to the Executive, Administrative or Profession Exemptions.

<sup>2</sup> See Nevada v. United States Dep't of Labor, 227 F. Supp. 3d 696 (E.D. Tex. 2017)