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# What Employers and Employees Should Know About Proposed Changes to National Minimum Wage and Overtime Regulations

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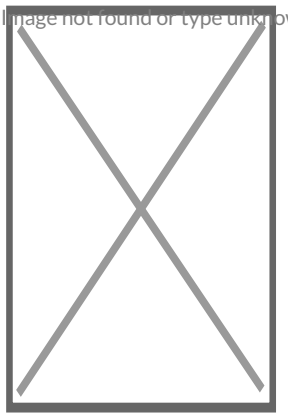

**By Andrew H. Dekle, Bouhan Falligant LLP**

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On July 6, the U.S. Department of Labor (DOL) officially published proposed changes to the Fair Labor Standards Act (FLSA) regulations, first announced on June 30. If these new rules become law, they could substantially increase the number of office workers, professionals, and other white-collar employees entitled to receive federal minimum wage protection and overtime pay (compensation at one and one-half times an employee's regular rate for hours worked in excess of 40 hours per workweek).

Currently, many, but not all, white-collar workers cannot claim the federal minimum wage or overtime because they are exempt from the FLSA's minimum wage and overtime requirements. The rationale for this exemption is that white-collar employees typically earn more than minimum wage, enjoy above-average fringe benefits, and experience greater opportunities for career advancement than other workers. The DOL exempts some professionals, such as teachers,

lawyers, and doctors, regardless of salary. However, most other white-collar workers are exempt only if they receive a predetermined, fixed salary of at least $455 a week (or $23,660 a year) and perform qualifying executive, managerial, administrative, or professional duties identified by the DOL.

If its proposed regulations go into effect as planned, the DOL will raise the current salary threshold for the white-collar exemption from $455 per week to $970 per week (or $50,440 per year). The DOL did not reach this new salary level by simply adjusting the current threshold for inflation (which would result in a weekly salary level of $561). Rather, the DOL wants to set and maintain the exemption threshold at a salary equal to the 40th percentile of weekly earnings for all full-time salaried workers as calculated by the Bureau of Labor Statistics. Clearly, the DOL seeks to expand the types of white-collar employees eligible for overtime, not just preserve the status quo, and to encourage employers to hire more workers to avoid paying overtime.

The DOL boasts that its proposal will make 4.7 million white-collar workers eligible for overtime who are currently exempt. That does not mean, however, that 4.7 million Americans will bring home a bigger paycheck. The DOL projects that 74.7 percent of affected workers (approximately 3.5 million people) will not earn any extra income because they work less than 40 hours per week. Of the 25.3 percent of affected workers actually expected to benefit from the rules change, only 931,000 workers are expected to regularly receive overtime compensation and only 71,000 individuals are expected to receive a salary increase so that they will remain exempt employees. The DOL acknowledges that some employees may lose their salaried status for an hourly wage, may be limited to working 40 hours, or may be denied the option to work remotely because of the challenges associated with tracking hours logged outside of the office.

The DOL conservatively estimates that American businesses will spend more than $254 million just to review the new regulations. In making this projection, the DOL assumed that it would only take businesses one hour to fully understand the change in the law. The DOL made similar calculations to estimate that employers would spend approximately $338 million to implement the new rules. In addition to these compliance costs, the DOL projects that increasing the salary level for the white-collar exemption will transfer more than $1.3 billion from employers to employees in the form of overtime pay.

The DOL's proposed regulations also invite public comment on changes to the job duties test for the white-collar exemption, such as requiring employees to spend a minimum amount of time performing exempt work.

Businesses concerned about how these proposed regulations might affect their bottom line should:

1) Review current salary levels and job responsibilities to determine how many employees currently qualify for the white-collar exemption and determine which employees, if any, would lose exempt status if the proposed regulations go into effect.

2) Review DOL regulations regarding the computation of overtime for salaried employees and estimate how much overtime would be paid to employees under the new regulations if their current salaries remain unchanged.

3) Consider hiring new employees to avoid paying overtime or reducing staff to cut overall labor costs. Before terminating any employees, however, employers should review the terms of their employment contracts as well as anti-discrimination laws to reduce the chance of wrongful termination lawsuits.

4) Review and update systems for tracking employee time.

5) Monitor the status of the proposed regulations, especially possible changes to the duties test.

The public may comment on the DOL's proposed regulation until September 4, 2015, at www.dol.gov/whd/overtime/NPRM2015/. As the DOL seeks to set a national standard for the white-collar exemption, interested Georgians should provide feedback to the DOL to ensure that the needs of our region are considered during the rulemaking process.

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