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exemptions from overtime.

James Paille • Jul. 27, 2015



The Fair Labor Standards Act has been around since 1938. The purpose was to set federal minimum wage (then 25 cents an hour) regulate child labor and set exempt (white collar workers) and nonexempt rules for overtime pay (originally 60 hours). There were a few changes such as overtime pay now starts at over 40 hours but generally the rules for overtime for the most part stayed constant until 2004.

By definition an employee is considered nonexempt – subject to overtime (time and 1/2 over 40 hours of work in a workweek- by federal standards) unless the employee can fall into one of four categories of exemption. These categories are executive,

administrative, professional and high salaried. The additional categories have

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If a person is to be considered exempt – they must meet all of the following tests:

As of 2016 (date is estimated and subject to change and possible delay) white collar workers would need to fulfill a duties test. The duties test is different for each of 3 of the 4 classifications (executive, administrative, professional). This is consistent with the current rules. The DOL is also asking for comments on possible changes to the duties tests.

Second is the salary level test, which says a salary has to be a certain amount. Currently, that salary is set at \$455 a week or an annual salary of a little over \$23,000 a year. For the three classifications above (executive, administrative, professional) these proposed regulations would raise that to \$970 a week, or a \$50,440 annual salary.

The high salary test would increase to \$122,148.

The department of labor is accepting public comments until September 4, 2015. The DOL is seeking comments on whether to allow nondiscretionary bonuses, such as certain production or performance bonuses, to satisfy a portion of the standard salary test requirement.

So what's next? After the comment period ends, the DOL will review all comments. Possible outcomes could be immediate implementation of the new regulations as proposed. More likely will be some revisions which could be implemented but more likely another comment period, another review and then implementation. Keep an eye on the next DOL notice sometime after September 4, 2015.

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has been an executive manager in the payroll service industry for more than 30 years,

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