

PUBLICATION

Start Planning for the Worst While You Hope for the Best

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For the past several months we have been updating you on the proposed changes to the Fair Labor Standards Act (FLSA) and the impact those changes could have on your workforce. The comment period for the proposed regulations has now closed, and the Department of Labor (DOL) has well over 200,000 comments to review before issuing its final regulations. While the DOL completes that task, many employers are left sitting and wondering what, if anything, they can do to prepare for these almost inevitable changes.

The vast commentary on this issue is clear that most agree the proposed increased threshold for the salary basis test will stand where it was proposed, or at least somewhere very near that number. With that significant change in mind, employers have the ability to start to assess their workforce and determine whether changes need to be made to certain employee classifications. For example, employers would be wise to identify employees in exempt positions who currently fall below the proposed salary threshold of \$970 per week.

Once these employees are identified, employers must analyze whether it makes business sense to increase the salaries of these employees to meet the proposed threshold, therefore allowing them to maintain their exempt status, or whether it makes more sense reclassify these employees as non-exempt. This would involve a more detailed analysis of the hours the employee is actually working and a determination of the proposed overtime cost associated with the change in the employee's classification. Employers should similarly analyze their highly compensated employees to determine whether some of those employees are also likely to risk loss of their exemption based on the proposed changes.

However, perhaps the most important preparation employers can undertake at this point is to begin to prepare their communication plan and messaging related to the upcoming changes. Many employees will be concerned about classification changes, and some will even consider a change from exempt to non-exempt as a negative employment action. In order to reduce the potential negative impact on workplace morale, employers should create a communication plan that includes education surrounding the proposed changes, as well as employee buy-in from the top down in their organizations.

Our FLSA team is available to help you perform the recommended audit on your workforce, and to craft a communication plan that will assist with the transitions needed when the DOL finalizes its rules. Please contact any member of the FLSA team or the lawyer with whom you regularly work to discuss the steps you can take to prepare for this historic change and the impact it will have on your company.