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LABOR DEPARTMENT PROPOSES CHANGES TO MINIMUM SALARY FOR OVERTIME EXEMPTIONS

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The United States Department of Labor has issued a notice of proposed rulemaking that would change the minimum salary levels necessary for an employee to be properly classified as exempt from the overtime compensation requirements of the Fair Labor Standards Act. Under the proposed rule, the minimum salary for most exemptions would rise from $455 per week ($23,660 annualized) to $679 per week ($35,308 annualized). The minimum annual compensation for the "highly compensated employee" exemption would rise from $100,000 to $147,414.

For employees in the executive, administrative and professional exemptions, the proposed rule would permit nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to ten percent (10%) of the required minimum salary. In addition, provided that the employee has received at least ninety percent (90%) of the required minimum compensation in each payroll week for 52 weeks, the employer would be permitted to make a single "catch-up" payment within one pay period after the end of the 52-week period, in order to bring the employee's compensation to the required level.

For "highly compensated employees," the proposed rule would require that ten percent (10%) of the minimum annual compensation be paid in the form of a weekly salary, but the remainder could be paid in the form of nondiscretionary bonuses and incentive payments. In addition, the rule would also permit a "catch-up" payment as described above.

The proposed rule would formally rescind the Obama-era rule proposed in 2016, which was blocked by permanent injunction before it could take effect. The proposed rule would make no changes to the duties tests for any of the exemptions.

Once the proposed rule is published in the Federal Register, the public will have 60 days to comment.

For questions or additional information, contact the author, Anthony George, or any member of our Retail or Employment and Labor teams.

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