The Regulatory Gauntlet, Part 2: The Proposed New Overtime Rules

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Presenters

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Today’s meeting is being recorded
• The recording and presentation slides will be available after the webinar and sent to registrants

Please use the Q&A function to pose your question(s)

In the Q&A, please “upvote” the questions you’d most like to see answered so we can prioritize
Overview of the FLSA & Overtime Regulations

Fair Labor Standards Act (FLSA)

• 1938 federal law that establishes federal minimum wage and overtime pay standards

• Employer must track employees’ hours and pay premium “overtime rate” of 1.5 times the employees’ regular pay rate for hours worked over 40 per workweek
Overview of the FLSA & Overtime Regulations

Fair Labor Standards Act (FLSA)

- FLSA contains various exemptions to overtime pay requirements, including for executive, administrative and professional employees – known as the EAP or “white collar” exemptions
- The FLSA states the Department of Labor will define and delimit by regulation the terms executive, administrative and professional employees from time to time
Overview of the FLSA & Overtime Regulations

Fair Labor Standards Act (FLSA)

• The FLSA sets a federal “floor” and states and localities may impose additional wage and hour requirements

• This includes setting more stringent requirements for overtime pay exemptions
Overview of the FLSA & Overtime Regulations

Federal Overtime Pay Regulations

Three-part test for EAP exemption:
1. Duties test
2. Salary basis test
3. Minimum salary level (set by weekly earnings)
Previous Regulatory Changes

Eight prior updates:

Other than 1975-2004, updates ranged from 5-15 years and increases in minimum salary ranged from 5-50%

This would be historically short time frame and large increase
Recent Regulatory Changes

2016 – Obama administration final rule
• Updates salary threshold to $47,476 ($913/week)
• Creates automatic increases every 3 years indexed to the 40th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region
• Enjoined by court and rescinded by Trump administration

2019 – Trump administration final rule
• Updates salary threshold to $35,568 ($684/week)
• Does NOT include automatic increases
• Went into effect January 1, 2020
2023 Proposed Rulemaking

- Sets minimum salary level to 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region
- This would be an over 50% increase to minimum salary from $684/week ($35,568 annually) to at least $1,059/week ($55,068 annually) for non-exempt employees
- Final rule will reflect most recent wage data – DOL projects this to be $1,158/week ($60,209 annually)
2023 Proposed Rulemaking

• Automatically updates the minimum salary threshold to the 35th percentiles of weekly earnings with increases set for every three years
  • Automatic updates will be issued in Federal Register at least 150 days before going into effect
  • Reserves right for DOL to temporarily delay automatic update, but must be done through NPRM
Effective Date of the Regulations

• A final implementation date could be as early as 60 days after a final rule is published

• Comments were due November 7
  • The DOL must review and respond to all substantive comments before publishing a final rule, which will include an implementation date.
  • We estimate that we’ll see a final rule published in March 2024 with an effective date in May 2024.
Impact of Proposed Rulemaking

Employees most likely to impacted on college and university campuses may be:

- Academic Advisors - Counselors
- Student Admissions Counselors
- Administrative Specialists – Coordinators
- Student Success Professionals
- Student Financial Aid Counselors
- Student Residence Hall Managers
- Athletic Trainers – Physical Therapists

*According to CUPA-HR salary analysis and data
CUPA-HR Survey Result Highlights

• **95%** of survey respondents indicated that they could only manage an increase to the salary threshold if it is lower than the proposed level.

• **84%** of respondents indicated that they would need to reclassify previously exempt employees to nonexempt status as a result of this rule.
CUPA-HR Survey Result Highlights

• 91% of respondents do not support DOL automatically updating the salary threshold every 3 years

• 89% of respondents believe that DOL should provide 180 days or more to comply with any final rule published to increase the salary threshold
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Questions?