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DEPARTMENT OF LABOR RELEASES PROPOSED RULES REVISING OVERTIME EXEMPTIONS, EXPANDING OVERTIME ELIGIBILITY TO MILLIONS

More salaried employees would be eligible for overtime compensation under proposed regulations recently issued by the U.S. Department of Labor. The DOL also has warned employers about the improper use of “independent contractors” to evade overtime compensation obligations.

As most employers are aware, certain employees are exempt from the overtime requirements of the federal Fair Labor Standards Act. To qualify for one of the most common exemptions (the so-called “white collar” exemptions) under current law, a worker must perform exempt duties (such as managerial, professional, or high-level administrative duties) and must be paid on the basis of a salary of not less than \$455.00 per week.

The DOL has not revised the salary threshold since 2004, and proposes increasing the salary threshold to better reflect the impact of inflation over that time (the present figure, for example, is less than the “poverty line” for a family of four).

The DOL’s proposed regulations would increase the salary threshold for exempt status to \$970.00 per week, or roughly \$50,440.00 per year. Employees who are paid on the basis of a salary of less than \$50,440.00 per year, therefore, would be eligible for overtime compensation, regardless of the particular duties that they perform. The White House projects that nearly 5 million additional workers will be entitled to overtime compensation when the regulations become final and take legal effect (which is expected to be in 2016).

Under the proposed rule the salary threshold also would increase automatically each year. The threshold would be set each year at 40 percent of the average earnings of full-time salaried employees as measured and published annually by the Bureau of Labor Statistics.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Jodi R. Bohr	(602) 530-8035	jodi.bohr@gknet.com
Donald Peder Johnsen	(602) 530-8437	dpi@gknet.com
Michael R. Ross	(602) 530-8498	michael.ross@gknet.com
Anne L. Leary	(602) 530-8333	anne.leary@gknet.com

Gallagher&Kennedy

2575 East Camelback Road | Phoenix, Arizona 85016-9225
Phone (602) 530-8000 | Fax (602) 530-8500



The DOL also recently issued a formal public notice on the subject of the misclassification of workers as “independent contractors.” The DOL noted that it has seen “an increasing number of workplaces” in which employers mischaracterize workers as independent contractors (who therefore are not eligible for overtime compensation), and that it “continues to receive numerous complaints from workers alleging misclassification.” The Department also noted that it “continues to bring successful enforcement actions against employers who misclassify workers.” The DOL also reiterated its longstanding general criteria for properly determining whether a worker is an employee or independent contractor.

The DOL also recently announced plans to conduct approximately 200 audits in Arizona over the next two years, and has stated that it has hired new investigators to manage the increased audit levels. The audits will assess whether employers are properly classifying their workers (hourly, salaried non-exempt, salaried exempt, and independent contractors). The audits also will review employers’ compliance with timekeeping requirements (accurate start, stop, and lunch times).

The DOL’s proposed salary threshold regulations will require employers to be cognizant of whether they have salaried employees who will become eligible for overtime when the regulations take effect next year. The DOL’s warning about the increased misclassification of workers as “independent contractors” also calls for employers to examine their own use of contractors to determine whether they are at risk for a DOL enforcement action, particularly in light of the Department’s announced plans for increased audits in Arizona. Employers in Arizona are advised to review their current practices, policies, and procedures to ensure that they are properly classifying employees as exempt or non-exempt, and that they are not improperly misclassifying covered employees as “independent contractors.”

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