



Change in federal overtime rules proposed; employers should consider employment tax implications

As promised by the Obama Administration, the US Department of Labor issued proposed regulations that would increase the pay of certain salaried-exempt employees by raising the standard salary tests for determining when overtime pay is required.

These proposed regulations will not be implemented until after the close of a public comment period that will begin when the Notice of Proposed Rulemaking (NPRM) is published in the *Federal Register*.

The factsheet is available [here](#).

Highlights of the proposed regulations

- The following changes in the standard salary tests are proposed for exempt employees (assuming it is 2016):
 - To be exempt from overtime pay, qualifying employees must be paid at least \$970 per week (\$50,440 a year). Currently, the minimum is \$455 per week (\$23,660 per year).
 - The annual salary threshold at which the salaried-exempt duties' test is relaxed for certain highly-compensated [employees](#) is \$122,148 per year (up from the current \$100,000).
 - The above amounts would be indexed annually to inflation.

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Employment tax considerations

Should the standard salary tests increase as the Department has proposed, it is estimated that wages will increase annually by anywhere from \$1.18 to \$1.27 billion, depending on if employers increase exempt salaries to account for the higher standard salary tests or instead hire additional employees to avoid overtime pay costs. Should the standard salary tests be revised, employers should consider the extent those changes will increase their employment tax expense.

The unemployment insurance wage base and/or tax rate schedules are tied directly to the average annual wage in some states (e.g., Washington), and in these states, higher overall wages could mean a bump in employers' unemployment insurance taxes. (See *EY Payroll NewsFlash*, Vol.16, #164, 6-25-2015)

If additional employees are hired to avoid overtime costs, employers should consider the employment tax impact of restarting the wage base for added employees (e.g.; Social Security, Medicare, unemployment and disability insurance).

- **Bonuses.** The Department is seeking comment on whether nondiscretionary bonuses, such as certain production or performance bonuses, should be allowed to satisfy a portion of the standard salary test requirement. Such bonuses include, for example, nondiscretionary incentive bonuses tied to productivity and profitability.
- **Employee use of electronic devices.** In August 2015, the Department hopes to publish a Request for Information (RFI) seeking information from stakeholders on the use of electronic devices (e.g., smart phones cell phones) by overtime-protected employees outside of scheduled work hours.

Mandating that employee use GPS and other tracking systems on their cell phones has increasingly been the subject of [work-related lawsuits](#) and an area where some states are strengthening legislation. GPS tracking systems are vital to many global and multistate employers that rely on them to timely and accurately identify employee work locations and comply with nonresident withholding and reporting requirements.

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