

It's Not Too Soon to Prepare for Proposed FLSA Changes

The U.S. Department of Labor (DOL) is proposing major changes to its overtime rules under the Fair Labor Standards Act (FLSA). The FLSA is the federal law that, among other things, requires overtime compensation for many employees (known as “non-exempt” employees) who work more than 40 hours in a workweek. The overtime rules, however, do not apply to certain classes of employees who are considered “exempt” from the law. According to the International Public Management Association for Human Resources (IPMA-HR), the proposed changes would extend overtime compensation eligibility to 4.6 million employees nationwide who are currently classified as exempt. While the final FLSA rules may not be announced until this summer or fall, municipalities can start preparing now by assessing how the changes could affect their payrolls.

Because the proposed rule changes relate to the FLSA’s exemptions, smaller towns that employ only non-exempt employees, such as road crew members, will be unaffected. Non-exempt employees are usually those who are paid an hourly wage or who work on a salary basis but do not meet the requirements of the job duties tests noted below. Likewise, the rule changes will not affect firefighters or law enforcement positions.

Currently, the FLSA specifically exempts from its provisions certain so-called “white collar” employees when all of the following conditions are met:

- the employee is paid on a salary basis;
- the salary is at least \$455 per week (\$23,440 per year) regardless of number of hours worked;
- the employee’s work meets the job duties test requirements of at least one of the exemptions outlined by the DOL under the Executive, Administrative, or Professional exemptions (See fact sheets on these exemptions on the DOL website at <http://www.dol.gov/whd/flsa/>); and
- the employee’s primary duty is exempt work.

The DOL has not proposed specific changes to the job duties tests; however, it is considering questions such as whether to limit the quantity of time an exempt employee may spend on non-exempt duties and still retain exempt status. If changes to the job duties requirements become a part of the final regulations, members will need to reassess the FLSA-status of *all* employees currently classified as exempt.

Most significantly, the DOL proposal more than doubles the salary threshold that must be met in order for an employee to qualify under the white collar exemptions. It would raise the current \$455 per week to \$970 per week (\$50,440 per year). Any employee falling below the weekly salary threshold would be non-exempt and therefore eligible for overtime pay protections.

The final salary threshold may end up lower than the proposed figure. Still, municipalities that have exempt employees should take stock of the items below to help assess their current situation in light of anticipated changes:

- which exempt employees earn below, or not far above, \$970 per week;

- the differential between each weekly salary and the proposed \$970 threshold;
- how many hours per week such employees work, particularly if more than 40;
- the cost of paying overtime compensation for their work hours above 40 per week;
- whether there are situations where employees doing the same job might be classified differently based on their salaries; and
- whether the change would affect any exempt employee covered by a collective bargaining agreement.

It should be noted that the DOL proposal also includes a new provision for automatic updates to the part of the FLSA that sets the minimum salary so that it is regularly adjusted based on the Consumer Price Index. This would remedy the difficulty the DOL has had in updating the law to reflect contemporary wages; indeed, the salary threshold has been updated just once since 1975.

As stated above, these changes to the FLSA are proposals at this time. The Municipal Assistance Center will provide further information as it becomes available.

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