DOL’s Proposed FLSA Regulations: What Employers Need to Know

Tom Gies
Andrew Bagley
Chris Calsyn
July 8, 2015
Today’s Presenters

Tom Gies

Andrew Bagley

Chris Calsyn
Today’s Discussion

• Proposed changes to the salary level test
• Changes to the job duties test?
• Recommendations for employers in response
• Special issues for government contractors
FLSA Introduction

• Statutory law and extensive federal regulations
  – Regulations last updated in 2004
  – 2014 directive to “modernize and streamline”

• Exemption generally require the satisfaction of **three separate tests**
  – Salary level test
  – Salary basis test
  – Job duties tests
NPRM Published June 30, 2015

• 60-day “notice and comment” period
• Proposals, subject to change
• Key points
  – Salary level test going up
  – DOL solicits comments on the duties tests
Proposed Threshold for Salary Level Test

• New threshold: approx. $50,000
  – 40th percentile of full-time salaried employees
  – Currently: $47,892. DOL projects $50,440 by Q1 2016

• Calculating the salary level
  – Guarantee of $970/week
    • Does not include benefits/fringes, bonuses, commissions
    • DOL invites comments

• Effective date – anticipated in 2016
Proposed Threshold for Salary Level Test

• Indexing: the “salary level” threshold will fluctuate yearly

• Regulations also modify HCE threshold
  – Set at 90th percentile of weekly earnings for all full-time salaried employees
  – Proposed amount is currently $122,148

• Part-time employees subject to timekeeping requirements
Job Duties Tests

• DOL solicits comments

• Moving target: no proposed changes, but DOL reserves the right to change the duties tests in the final rule

• DOL’s concerns
  – Percentage of time on nonexempt tasks
  – Constituencies complaining of lack of clarity

• DOL to provide more examples
What Employers Should Be Doing Now

• Job classification audits – prepare for changes
  – Salary adjustments
  – Other changes in compensation
  – Changing duties

• Training on “managing to non-exempt status”
  – What constitutes “work”
  – Timekeeping requirements and time reporting
What Employers Should Be Doing Now

• Employee morale issues
• Oddball situations
• Financial consequences
  – OT costs
  – Lowering salaries
  – Budgeting
Special Implications for Government Contractors

• Fair Pay Rules
  – Wage-hour claims are reportable events

• Higher stakes in classification disputes
Relevant Links

• DOL website on NPRM

• Crowell & Moring Client Alert:
  – http://www.crowell.com/NewsEvents/All/Proposed-FLSA-Regulations-More-Than-Double-Salary-Threshold-for-Exempt-Employees
Contacts

Thomas P. Gies
tgies@crowell.com
202.624.2690

Christopher Calsyn
ccalsyn@crowell.com
202.624.2602

Andrew Bagley
abagley@crowell.com
202.624.2672