DOL’s Proposed Changes to Overtime Pay Will Impact Most Employers

This week the DOL released proposed changes to the Fair Labor Standards Act overtime pay rules which may have a significant impact on many employers. The DOL also issued an FAQ document that makes it clear that there is no exemption for non-profit or government organizations under the proposed rules. The FLSA rules generally apply to all organizations having an annual dollar volume of sales or business done of at least $500,000.

Under the current regulations, a white collar employee may be exempt from overtime rules if they are paid at least $455 per week (equivalent to $23,660 annually for a full-year employee) and have primary duties that are consistent with managerial, administrative, or professional positions as defined in the regulation’s standard duties test. (Certain computer professionals and teachers are excluded from these requirements) The DOL has proposed setting the new minimum salary level threshold at the 40th percentile of weekly earnings for full-time salaried workers based on national data from the Bureau of Labor Statistics. In 2016 the DOL estimates the threshold to be $970 a week or $50,440 for a full-year employee, and proposed rules will index the threshold annually. DOL proposes publishing the minimum salary 60 days before it becomes effective.

At this time the, DOL has not proposed changes to the standard duties test and is still considering whether to allow nondiscretionary bonuses to satisfy a portion of the standard salary test requirement. The DOL is seeking comments over the next 60-days from all stakeholders regarding the proposed rules before final rules are issued.

There are many entry level management and support staff positions that are typically classified as exempt from overtime pay that may be impacted. Furthermore, it is not uncommon for exempt positions to be eligible for additional benefits (paid time off) and/or be subject to different work rules (timekeeping, flexible work schedules) than non-exempt positions.

Chernoff Diamond recommends that employers begin to evaluate the potential impact of these proposed rules on full-year and partial-year employees. This should include a review of salaries, work schedules, benefits provisions and primary duties.