

## TAKE TWO: DOL SENDS NOTICE TO CHANGE OVERTIME RULES ... AGAIN

On March 7, 2019, the **US Department of Labor** issued its long awaited Notice of Proposed Rulemaking, regarding the executive, administrative and professional employees under the Fair Labor Standards Act. The new proposed regulations can be reviewed [here](#).

Currently, certain employees are exempt from the overtime provisions if they meet certain salary tests and perform certain job duties. The current salary level for employees to be exempt from overtime is **\$455.00** per week (\$23,660.00 annually) and the new proposed rules increase that amount to **\$679.00** per week (\$35,308.00 per year).

Employers will recall that the US Department of Labor attempted a substantial salary increase to these exemptions in 2016, but a US District Court Judge in Texas blocked those proposals. As a result, employers should consider a wait-and-see approach on how these proposed rules play out before implementing any salary increase to its current exempt employees.

The Notice of Proposed Rule Making includes some additional changes as well:

1. An increase to the highly compensated employee exemption from \$100,000.00 to \$147,414.00.
2. A commitment to review and possibly update the exemptions salary threshold every four (4) years.
3. Allowing employers to use nondiscretionary bonuses and incentive payments (including commissions) that are paid annually or more frequently to satisfy up to 10 percent of the standard salary level.

Questions remain whether these proposed regulations will cross the finish line or be blocked again by a US District Court. Litchfield Cavo attorneys will watch for any legal challenges and related litigation that may block these proposed regulations as they go through the **Office of the Federal Register** for publication. Employers are encouraged to discuss any changes with their attorney prior to making changes until the rules become final.

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