

## ***New Proposed Regulations Regarding FLSA Exemptions***

RICK VERSTEGEN, BRIAN P. GOODMAN, DOUGLAS E. WITTE | 10.25.23

### ***Background***

On August 30, 2023, the Department of Labor (DOL) proposed increasing the salary level for the executive, administrative, and professional exemptions from overtime pay under the Fair Labor Standards Act (FLSA). These exemptions are sometimes referred to as the white-collar exemptions. These proposed changes may have a significant impact on all employers, including school districts, and therefore, employers should be prepared for any such changes, if these proposed changes become final.

### **CURRENT WHITE-COLLAR SALARY LEVEL**

Employees who qualify under one of the white-collar exemption categories are exempt from overtime pay. To qualify for an exemption, an employee must meet certain requirements related to salary level, salary basis, and primary duties. Currently, the white-collar exemptions require a salary level of \$35,568. Employees who do not meet the salary level requirement must be paid overtime.

The proposed rule would only change the salary level requirements for the white-collar exceptions, leaving the current salary basis and primary duties requirements in place. Despite the fact the “duties” tests did not change, districts still might want to review the actual duties performed by employees classified in exempt positions to make sure they still meet those requirements.

## PROPOSED WHITE-COLOR SALARY LEVEL INCREASE

The proposed rule would increase the minimum salary level from \$684 per week (\$35,568 per year) to at least \$1,059 per week (\$55,068 per year). The proposed rule would implement an automatic update to this salary level every three years.

The proposed rule for the highly compensated employee exemption would also increase the minimum annual compensation requirements from \$107,432 per year to \$143,988 per year, subject to increases every three years.

Additionally, when it promulgates the final rule, the DOL proposes to set the salary level at the 35<sup>th</sup> percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region (currently the South) using the most recent data then available. This could result in a salary level even higher than \$55,068 per year.

## SPECIAL RULES FOR SCHOOLS

School districts should also be aware that the impact of these changes on them may be limited because of unique provisions in the FLSA that exempt many school district employees from the minimum salary level requirements of the FLSA. For example, teachers (as defined under the FLSA) are exempt from the minimum salary level requirements (in addition to being exempt from the salary basis requirements). Additionally, academic administrative employees (such as principals, curriculum directors, directors of pupil services, etc.) do not need to be paid at this specific salary level so long as they are paid on a salary basis at a level at least equal to the entrance salary for teachers in their districts. However, other positions could be affected.

## ***Conclusion***

Litigation is anticipated regarding this proposed rule before it becomes final, as was the case when the Obama administration attempted and failed to significantly increase these minimum salary levels. It is unclear when, if ever, the rule will take effect. Employers will want to start thinking about how they might modify their practices should these rules take effect. Employers may wish to be cautious not to take action too early given that the rules are only being proposed at this point and a court might potentially stop them from ever taking effect.

Employers seeking to review their overtime policies in anticipation of the DOL's proposed changes to the regulations that implement the white-collar exemptions should consult with legal counsel to ensure continued compliance with all applicable wage and hour laws. Any member of Boardman Clark's School Law Practice Group would be happy to help.

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## ***Primary Authors***



**Rick Verstegen**  
(608) 286-7233



**Brian P. Goodman**  
(608) 283-1722



**Douglas E. Witte**  
(608) 283-7529

## ***School Law Practice Group Members***

**Rick Verstegen**  
(608) 286-7233

**Eileen A. Brownlee**  
(608) 822-3251

**Tess O'Brien-Heinzen**  
(608) 283-1798

**Daniel T. Fahey**  
(608) 286-7216

**Brian P. Goodman**  
(608) 283-1722

**Steve Zach**  
(608) 283-1736

**Matthew W. Bell**  
(608) 286-7239

**Eric B. Hagen**  
(608) 286-7225

**Douglas E. Witte**  
(608) 283-7529

**David P. Weller**  
(608) 286-7235

**Christopher T. Schmidt**  
(608) 286-7157

**Sarah Ghazi-Moradi**  
(608) 286-7165

**Michael J. Julka**  
(608) 286-7238

**Jennifer S. Mirus**  
(608) 283-1799

**Sherrice Perry**  
(608) 286-7242

**William L. Fahey**  
(608) 286-7234

**Rhonda R. Hazen**  
(608) 283-1724