



**Changes in Fair Labor Standards Act**  
*Author: Tracy H. Stroud, Attorney at Law*

The current salary level threshold for exemption is that an employee must be paid at not less than \$455 per week or \$23,660 annually to meet the salary level test under the FLSA. The new proposed salary threshold in proposed regulations for exemption is \$970 per week or \$50,440 annually.

Remember, however, to be exempt, an employee must meet all three tests, not just the salary level test.

The tests are: How employees are paid? (1) SALARY BASIS: Employee must be paid a pre-determined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed. (2) SALARY LEVEL: Currently this is \$455/week or \$23,660 per year; and (3) JOB DUTIES TEST: Each category of exemption – Executive, Administrative and Professional has different job duties as set forth in the regulations.

If this new salary level regulation goes into effect, any salaried “exempt” employees (i.e. currently ineligible for overtime pay) that make less than \$970 per week will be reclassified as non-exempt and entitled to overtime when the final rule goes into effect. Also employers will be required to keep up with the DOL’s record keeping requirements for these new non-exempt employees including keeping records in these employees for: (1) Hours worked each day; (2) Total hours worked each week; (3) Daily/weekly straight time earnings for the workweek; and (4) Overtime earnings for the workweek.

The impact if this regulation is put into effect is that more employees will be entitled to overtime. The DOL estimates almost 5 million employees will become non-exempt under the new regulations, which will result in more overtime claims and lawsuits and an increase in number of Department of Labor audits.

How can employers prepare? Determine which employees will possibly be re-classified; determine how many work hours is the employee currently working for the compensation paid; beware of “hidden overtime,” meaning even if position is scheduled for less than 40 hours per week, are you confident that the employee is performing no duties outside working hours (e.g. answering emails, reading work materials, etc.), and install time tracking mechanism.

The comment period for these proposed rules ended on September 4, 2015. At this point, the Department of Labor will either: (1) Proceed with the proposed changes and issue a Final Rule, which means employers will likely have as little as 120 days to comply; (2) Issue a new or modified proposed rules, which will include a new comment period; OR (3) Take no action of the proposed rule.