

The Latest Salary Provisions and Their Impact on Employee Rewards

As reported in the Aon Washington Report, the last couple of weeks have seen two significant developments in the area of broad based compensation. A summary of the developments and what employers should do next is provided below.

DOL announces proposed rule updating overtime provisions

On March 7, 2019, the Department of Labor (DOL) announced a proposed rule that updates the salary threshold using current wage data, projected to January 1, 2020. Employees with a salary below \$455 per week (\$23,660 annually) must be paid overtime if they work more than 40 hours per week. Employees making at least this salary level may be eligible for overtime based on their job duties. The current salary level was set in 2004. Among other provisions, the proposed changes to the rule would:

- Increase the minimum salary required for an employee to qualify for exemption from the current level of \$455 to \$679 per week (equivalent to \$35,308 per year).
- Increase the total annual compensation requirement for highly compensated employees from the currently enforced level of \$100,000 to \$147,414 per year.

Note from the DOL website: *“This proposed regulation has been submitted to the Office of the Federal Register (OFR) for publication, and is currently pending placement on public inspection at the OFR and publication in the Federal Register. This version of the proposed regulations may vary slightly from the published document if minor technical or formatting changes are made during the OFR review process. Only the version published in the Federal Register is the official proposed regulation. The public will have 60 days to comment on the proposed regulation; the comment period will begin on the date of publication in the Federal Register.”*

The DOL news release is available [here](#).

Additional information from the DOL is available [here](#).

Aon is continuing to monitor the developments and will have more direct insights regarding how this will impact staff in the coming months.

Federal judge reinstates EEOC Pay Data Collection Requirement

On March 4, 2019, Judge Tanya S. Chutkan of the U.S. District Court for the District of Columbia issued an order that reinstates the Equal Employment Opportunity Commission's (EEOC) EEO-1 pay data collection requirements. The Office of Management and Budget halted the requirement in December 2017 to determine the burden on employers. The EEO-1 requires employers with at least 100 employees and federal contractors (with at least 50 employees and a contract of \$50,000 or more with the federal government) to file an EEO-1 form. This form will identify the number of employees by job category, race, sex, and ethnicity. The pay data collection requirement would obligate employers to include in their EEO-1 report W-2 wage information and total hours worked for all employees by race, ethnicity and sex within 12 proposed pay bands. This will increase transparency significantly, requiring firms to determine their ability to report properly and identify the implications that this disclosure might have.

The EEOC recently announced that the EEO-1 website officially opens on March 18, 2019, and the deadline to submit EEO-1 data (which at the time of the announcement did not include the pay data reporting requirement) has been extended until May 31, 2019.

Please note: this is a developing story, and readers should check the EEOC website for the latest information and guidance. At the time of publication, the effective date of including the pay data collection was uncertain. Aon will continue to monitor the situation and will provide updates as they develop.

The federal court order is available [here](#).

The EEOC EEO-1 Survey website is available [here](#).

Potential impact

Employers need to understand the implications of both of these developing federal rules.

Proposed Overtime Rules: The proposed changes to the overtime rules will be published in the Federal Register shortly, and at that time, will be subject to a 60-day public comment period. Once they are published, Aon will review the rules carefully to determine if we will submit comments, while also continuing to provide advisory assistance to clients about how to most effectively move forward and prepare for the changes ahead. After the comment period is closed, the DOL will consider all the comments before issuing a final rule. We expect the process to take several months, with anticipation that the DOL will try to finalize the rules by the end of 2019 or early 2020. This will avoid any chance that a new administration could repeal or reverse the final rules.

The proposed minimum salary change represents a significant update to the current FLSA regulations, where the threshold is \$455 per week or \$23,660 annually, but it still is significantly lower than the \$47,476 annually (\$913 per week) rate proposed by the Obama Administration in 2016, which never went into effect. The proposed threshold would expand overtime eligibility to more than a million additional U.S. workers, according to the DOL. These workers include employees who currently are classified as exempt and earn less than \$35,308 per year. The DOL did not propose any changes to the current FLSA duties tests for exemption classification.

The DOL is also seeking public comment on implementing a periodic review to update the salary threshold, suggesting that these thresholds be reviewed every four years.

For now, employers may want to review their employee pay levels and identify whether any exempt employees may be impacted by the proposed increase to the minimum salary level and if so, what the appropriate response will be (increase the salary or reclassify the job to nonexempt). Since a similar change was proposed in 2016, many employers may have already done this, and because the regulations are not yet final, it is not necessary to make any changes yet. But it is always important to be mindful of both the minimum salary thresholds and the duties tests and monitor your jobs for compliance on a frequent and periodic basis.

EEOC Pay Data Collection: The EEOC Pay Data Collection Requirement was introduced by the Obama Administration and scheduled to go into effect in March 2018 until it was stalled by the Trump administration, prompting the current lawsuit. This latest action removes the stay, ostensibly clearing the way for the data to be required this reporting year, which opens March 18, 2019. Since the burden associated with this level of data collection effort was not anticipated for this reporting year, we expect that the EEOC may not require it to be provided in this reporting year.

We encourage employers that are in a holding pattern not to rush to action. The EEOC is expected to provide further guidance on this issue within the next week and we will provide an update.

The increased attention to pay data has been a hot topic over the past decade and several administrations have attempted to introduce legislation to increase reporting of this information. With even greater attention now being paid to pay equity, employers should be prepared to respond to requests for pay data by reviewing their HR analytics and reporting capabilities so that the information can be readily accessed.

Aon is continuing to monitor the situation. To learn more about these proposed changes, their impact on employee rewards, and recommended next steps, please [contact our team](#).

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