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Client Alert: Department of Labor Releases New Overtime Rule Proposal

On Thursday, March 7, 2019, the U.S. Department of Labor (“DOL”) announced a Notice of Proposed Rulemaking that seeks to update the regulations governing the administrative, executive, and professional exemptions to the minimum wage and overtime requirements of the Fair Labor Standards Act. The proposed rule seeks to increase the minimum salary threshold from **\$23,660** (or **\$455** per week) to **\$35,308** (or **\$679** per week), meaning that those employees who earn less than this amount automatically would be eligible for overtime pay, regardless of job duties. The proposed rule rescinds the Obama-era proposal which attempted to set the minimum salary threshold at \$47,476, before it was subsequently invalidated by a federal district court in Texas. While not as drastic an increase, the new minimum salary threshold under the proposed rule still represents a nearly 50% increase from the current threshold.

The proposed rule also increases the minimum salary threshold for “highly compensated” employees, from **\$100,000** to **\$147,414**, approximately \$13,000 higher than the level set by the Obama-era proposal. It also permits employers to count certain non-discretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of an employee’s salary, provided that such payments are made on an annual or more frequent basis. For “highly compensated” employees, such non-discretionary bonus and incentive payments can

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constitute the bulk of an employee's annual compensation, so long as the employee receives \$35,308 annually (or \$679 per week) on a regular salary or fee basis. It does not, however, modify the duties tests, nor does it include any provisions for automatic updates to the minimum salary threshold.

Once the Notice is published in the Federal Register, employers will have 60 days to submit comments on the proposed rules. Accordingly, the DOL anticipates that the final rule will become effective January 2020. According to recent statistics, nearly one million additional workers would be entitled to overtime from the proposed rule. To comply, employers either would need to increase employee compensation to meet the new minimum, or provide overtime to employees whose salaries no longer meet the minimum. Employers should evaluate their exempt workforce now, to determine the potential impact of the proposed rule on their salaried exempt workforce.

If you have any questions concerning this rule proposal, do not hesitate to contact Jason Kim, Corinne Biller or another member of Neal Gerber Eisenberg's Labor & Employment group.