



This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

Here We Go Again: Department of Labor Proposes New Changes to Overtime Regulations!

On March 7, 2019, the United States Department of Labor (DOL) released proposed revisions to the overtime regulations that, if issued as final regulations, will increase the number of employees who are eligible for overtime pay. Under the Fair Labor Standards Act (FLSA), employees are exempt from overtime pay if they fit into one of the specific exemptions, including the executive, administrative or professional exemptions. In order to qualify for any of these exemptions from the overtime regulations, an employee must (1) be paid on a salaried basis; (2) be paid above a minimum amount (currently, \$23,660 per year or \$455 per week); and 3) fulfill a duties test.¹

Under the new proposed regulations, the minimum salary amount to qualify for exemption will be increased to \$35,308 per year or \$679 per week.² All employees who earn less than \$35,308 per year will be eligible for overtime.

In addition, the FLSA includes an exemption from overtime for highly compensated employees that requires employees to meet both a minimum salary and a duties test. The current minimum salary of \$100,00 per year is proposed to increase to \$147,000 per year under these new regulations.

Unlike the prior proposal to change the overtime regulations that was made in 2016 that was never implemented, this proposal does not include automatic increases to these salary levels, but merely indicates that the DOL will propose updated salary levels every four years using the regulatory notice and comment period.

Following publication of these proposed changes in the Federal Register which is currently pending, there will be a 60-day comment period, and then the DOL will take some time to consider the comments prior to issuing a final rule. It is currently expected that the changes would become effective in 2020. Because the proposal may still be modified, organizations may want to start examining their workforces but refrain from making any changes until final regulations are issued.

If you have questions about these proposed regulations and how they may impact your workforce, please contact your PBPA attorney.

¹ Please review this webcast for additional information about these FLSA exemptions: <https://www.pbpatl.org/resources/webcast-taking-care-of-flsa-business-working-overtime-avoiding-wage-hour-pitfalls-for-nonprofits/>

² The proposal also indicates that up to 10% of the salary minimum will be able to be satisfied through nondiscretionary bonuses, incentives and/or commissions that are paid annually or more frequently, and that employers will be permitted to make a “catch up” payment at the end of the year to bring employees up to the required salary level (although the full implications of using this catch-up payment if an employee is not employed for the full year have not been determined).