

## **LEGAL ALERT – U.S. DEPARTMENT OF LABOR RELEASES NEW OVERTIME RULE PROPOSAL – March 8, 2019**

On March 7, 2019, the U.S. Department of Labor announced a Notice of Proposed Rulemaking (NPRM) that seeks to heighten the “salary basis” threshold for purposes of determining whether an employee may be considered exempt from the mandatory overtime pay requirements of the Fair Labor Standards Act.

- Under the Fair Labor Standards Act, certain “white collar” employees may be considered exempt from the Act’s requirement to receive overtime pay if these employees are paid at or above a certain “salary basis” threshold.
- Under the current salary basis threshold, set in 2004, employees with a salary below \$455 per week (or \$23,660 annually) must be paid overtime if they work more than 40 hours per week, even if they otherwise meet the “duties” requirements for being an exempt employee under the Fair Labor Standards Act.
- The new rule change proposed by the Department of Labor would raise the salary basis threshold from its current level of \$455 to the amount of \$679 per week (or equivalent to **\$35,308** per year).
- Importantly, the new salary basis proposal does not include provisions that would require the salary basis threshold to raise or lower automatically in order to adjust to inflation, in contrast to more controversial previous rule-making efforts.
- The NPRM’s proposed increase of the salary basis threshold is not yet in effect given that it is still subject to revision and comment as it progresses through the federal rule-making process. However, many commentators expect that it will be adopted.

This looming change to the salary basis threshold will require employers to evaluate their compensation to salaried employees paid less than \$35,308 per year. Specifically, employers may need to either raise the salaries of certain employees or begin paying them on an hourly basis, with overtime as applicable. Employers may also take this opportunity to review the status of their employees who are classified as exempt from the overtime requirements of the Fair Labor Standards Act and determine whether their job duties meet the requirements for exempt status under the Act.

The attorneys at Martenson, Hasbrouck & Simon LLP have guided employers through this process and are happy to assist you with legal compliance and practical considerations.