

***Note to media:** Betsy Davis is available as a resource for your coverage of this wage and hour issue and a variety of other labor and employment law topics.*

For: LeClairRyan, Richmond, Va.

From: Parness & Associates, Aberdeen, N.J.

FOR IMMEDIATE RELEASE

**Attorney Offers Guidance on Proposed DOL Overtime Exemption Changes**

*--LeClairRyan's Betsy Davis outlines considerations for employers as Department of Labor mulls higher limits for overtime exemption threshold*

RICHMOND, Va. (3/19/19)— Businesses with employees classified as “exempt” from overtime should be aware of changes proposed by the United States Department of Labor (DOL) raising the salary basis threshold for “white collar” exemption under the Fair Labor Standards Act’s (FLSA), according to Betsy Davis, a Richmond-based member of LeClairRyan and Co-Leader of the national law firm’s Labor and Employment Practice Team. If a final rule issues without revision, employers should review exempt employees’ salaries to determine whether the employer remains in compliance, she advised.

The proposal, which the DOL anticipates will take effect in January 2020, will raise the salary basis threshold for exempt employees from \$23,660 to \$35,308 per year or to \$679 per week, she notes in a recent blog, [DOL Proposed OT Rule – FLSA Exemption Salary Threshold Increases to \\$35K](#). Her post appears in the firm’s [LR Workplace Defender](#) blog, which focuses on employment litigation issues. The proposed regulation fills the void left by a controversial Obama-era rule that attempted to double the minimum salary to qualify for exemption from \$23,660 to over \$47,000, which was blocked by a permanent injunction in a Texas court.

The FLSA is the federal law that governs minimum wage and overtime pay for all hours worked. Currently, “white collar” exemptions may apply where workers meet certain duties tests and are paid on a salary basis of at least \$455 per week. These workers are considered exempt under the FLSA’s executive, administrative, professional, or outside sales exemptions.

The DOL proposal also increases the salary threshold for highly compensated employees from \$100,000 to \$147,414, about \$13,000 higher than the Obama administration’s rule. Currently, highly compensated employees performing office or non-manual work and paid total annual compensation of \$100,000 or more — which must include at least \$455 per week paid on a salary or fee basis — are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

“The DOL declined to make any changes to the duties tests which must be met to be exempt,” writes Davis. “The DOL has also declined to include an automatic increase of the salary basis. Instead, the rule proposed updating the salary levels every four years after notice-and-comment periods.”

Employers have 60 days until May 6, 2019 to submit comments about the proposal, she adds. “If a final rule issues without revision, employers should review exempt employee’s salaries more than \$23,660, but less than \$35,308 to determine whether it will comply by raising the salary to preserve exempt status or reclassifying the employee as non-exempt,” Davis concludes.

The full column is available at: <https://lrworkplacedefender.com/dol-proposed-ot-rule-flsa-exemption-salary-threshold-increases-to-35k/>

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**Press Contacts:** At Parness & Associates Public Relations, Bill Parness, (732) 290-0121, [bparness@parnesspr.com](mailto:bparness@parnesspr.com) or Lisa Kreda, [lkreda@parnesspr.com](mailto:lkreda@parnesspr.com)