
“Pay” Attention: Tracking Two New Federal Wage Requirements

MARCH 13, 2019

An eventful first week of March saw newsworthy announcements related to the Fair Labor Standards Act's (FLSA) overtime rule and the EEO-1 pay data reporting requirement.

Overtime Rule

On March 7, 2019, the US Department of Labor (DOL) announced its long-anticipated proposal to revise the “white collar” overtime exemption regulations. In a Notice of Proposed Rulemaking (NPRM), the DOL's Wage and Hour Division stated its intention to increase the salary thresholds determining which workers are “nonexempt” and therefore eligible for overtime compensation under the federal FLSA. The minimum salary required for an exemption from the requirement for overtime pay would increase from \$455 per week (the equivalent of \$23,660 annually) to \$679 per week (the equivalent of \$35,308 annually), while the minimum total compensation requirements for “highly compensated” employees would increase from \$100,000 annually to \$147,414 annually. The proposed rule does not propose changes to the standard duties tests for the white collar—executive, administrative and professional—exemptions (which also must be met in order for an employee to qualify as exempt).

If ultimately adopted, the proposed rule would replace the 2016 “final rule” issued by the DOL during the Obama administration, which would have increased the minimum salary threshold to \$913 per week (the equivalent of \$47,476 annually). That rule has been in limbo since shortly before its December 1, 2016 effective date, when it was enjoined by the Eastern District of Texas. Unlike the 2016 rule, the DOL's latest proposal does not call for subsequent automatic increases to the minimum salary threshold.

The overtime proposal (which is 220 pages long and includes other nuances on which we will report if and when a new final rule is issued) will shortly be published in the *Federal Register*. Following publication, interested parties will have 60 days to submit comments. If the rule is finalized, the DOL anticipates that it will take effect in January 2020, marking the first adjustment to the minimum salary threshold since 2004.

EEO-1 Pay Data Reporting Requirement

On March 4, 2019, the United States District Court for the District of Columbia ordered the reinstatement of the EEO-1 pay data reporting requirement that the Equal Employment Opportunity Commission (EEOC) had previously announced in September 2016. This requirement mandates that, as part of their EEO-1 filings, employers must report W-2 wage information and total hours worked by gender, race and ethnicity. Like the 2016 overtime rule, the EEO-1 pay data reporting requirement was stalled prior to its original effective date, when, on August 29, 2017, the White House Office of Management and Budget (OMB) stayed the EEOC's plans to collect the additional pay data, notwithstanding its earlier approval. Three months later, two advocacy groups sued the OMB, seeking the reinstatement of the approved data reporting requirement.

Last week, the DC District Court reinstated the requirement, ruling that the OMB did not have sufficient justification to issue the stay. Although the judge expressly ordered that the "previous approval of the revised EEO-1 form shall be in effect," it is unclear whether employers will ultimately be required to submit the required pay data by May 31, 2019, the current deadline for this year's EEO-1 report. It is widely believed that the decision will be appealed (in which case a stay would likely be sought) or that the government may consider further postponing the current filing deadline. Given the uncertainty, however, we advise employers to begin planning for the revised requirements.

WilmerHale will be closely monitoring both of these requirements for additional developments. For more information or assistance in reviewing or revising your current pay practices and reporting procedures, please contact a member of WilmerHale's [Labor and Employment team](#).

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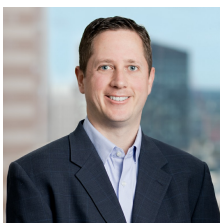
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