

**BLOGS**

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## Don't Get Burned By Misclassifying Employees

Wage and hour issues heated up earlier this year when the U.S. Department of Labor (DOL) released a proposed rule that would more than double the salary threshold for employees to be classified as exempt under the "white collar" exemptions to the federal overtime requirements. You can read our [post](#) from July of this year to learn more about the proposed rule, which would raise the minimum weekly salary requirement for the white collar exemptions from \$455 per week to \$970 per week.

The increased salary issue was expected to reach the boiling point with the release of the final DOL rule in late 2015 or early 2016. However, according to the DOL's recently released [regulatory agenda](#), the DOL does not expect to issue a final rule until July 2016. Given the anticipated delay in the final rule, employers may be tempted to wait until we see the final rule to begin addressing it. However, it can take some time to plan for and implement compliance steps. As such, it makes sense to be proactive in analyzing how your particular workplace might respond to the anticipated final rule. Some options include raising exempt employee salaries to keep them exempt or converting exempt employees below the salary threshold to non-exempt employees.

In addition, it is important to remember that, even under the current rules, employers can get burned by misclassifying employees as exempt when they do not meet the requirements of the "white collar" exemptions. The "white collar" exemptions cover employees who (1) are paid a salary that exceeds the minimum threshold, *and* (2) primarily perform job duties that are executive, administrative, or professional. With all of the recent focus on the salary threshold, employers should be careful not to overlook the job duties requirement of the exemption tests.

The importance of carefully considering job duties was recently demonstrated by a [ruling](#) issued by the U.S. Court of Appeals for the Eighth Circuit, which has jurisdiction over appeals from cases handled by Minnesota federal district courts. The case examined the administrative white collar exemption, which provides that the employee's primary duty: (1) must be the performance of office work directly related to the management or general business operations of the employer or its customers; and (2) must include the exercise of discretion and independent judgment with respect to matters of significance. In discussing the first factor, the Eighth Circuit Court of Appeals differentiated between exempt work that was

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related to the management or general business operations of the employer an energy company and the direct, hands-on, non-exempt work of the production and distribution of energy. Ultimately, the Court found that the question of whether the plaintiff did exempt work was too close to decide at the summary judgment stage and must be decided by the jury.

This case serves as an important reminder that employers must carefully examine an employee's job duties when considering whether to classify the employee as exempt from the wage and hour laws. Don't get burned; as you await the final salary threshold rule from the DOL, you should prepare for the change by evaluating both the salary threshold and job duties of your employees currently classified as exempt.