



LEGAL NEWS FOR YOUR BUSINESS

October 2023

Employment Alert

EMPLOYMENT ALERT: DOL PROPOSED OVERTIME RULE

Now, while it is still early, is the time for employers to consider and prepare for potential increased overtime costs. As it stands today, the salary threshold for workers who can be exempt from overtime pay requirements is \$35,568. That means, if all other exemption requirements are satisfied, workers with a salary of at least that amount are “exempt” and can lawfully work more than 40 hours a week without additional pay for overtime hours.

However, on August 30, 2023, the Department of Labor (“DOL”) announced a proposed rule that would increase the salary threshold from \$35,568 to \$55,068, a more than 50% increase. If/when, the proposed rule is adopted, some 3.6 million workers across the United States who are exempt today, will be exempt no longer.

Under the Fair Labor Standards Act (“FLSA”), employees who have a salary under the threshold amount must be paid 1.5 times their hourly rate for every hour worked over 40 hours per week. Under current regulations, employees must have a salary of at least \$35,568 and certain job duties to be exempt from the overtime requirement. The FLSA recognizes exemptions for executives, administrative employees, learned and creative professionals, computer employees, and outside sales employees. Additionally, workers that perform at least one duty of an executive, administrative, or professional employee and are paid a salary of \$107,432 are exempt from overtime pay requirements.

The DOL's proposed rule would increase the threshold to include employees making less than \$1,059 per week—the equivalent of \$55,068 per year—instead of the current threshold of \$684 per week. Further, the proposed rule would include a mechanism to automatically update the threshold every three years. This provision aims to increase the threshold at a rate consistent with wage trends and inflation. The proposed rule would also restore overtime protections for workers in U.S. territories. The overtime threshold was in place in U.S. territories from 2004 to 2019, so the proposed rule would return to that practice and require employers in those territories to observe overtime requirements as well as federal minimum wage requirements.

The proposed rule is not final and will be held open for comments through October 29, 2023. However, employers should take steps now to review current overtime policies and procedures and identify employees who may be covered by the proposed increased salary threshold.

If you have any questions regarding employer requirements under the FLSA, please do not hesitate to contact any member of Gardner Skelton's employment team.

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\$36 MILLION VERDICT AWARDED IN DISABILITY DISCRIMINATION CASE

Having and abiding by correct non-discrimination policies could be worth tens of millions of dollars. On September 1, 2023, a jury awarded a \$36 million verdict against a Nebraska trucking company in *EEOC v. Werner Enterprises* for failure to hire and failure to accommodate. In 2016, Victor Robinson ("Robinson"), a deaf man, applied for a truck driver job at Werner Enterprises, LLC ("Werner") after completing his training at a driving school owned by Werner, obtaining his commercial driver's license ("CDL"), and an exemption from the hearing regulation from the Federal Motor Carrier Safety Administration. Werner, however, told Robinson that they would not hire him because he was deaf. Further investigation showed Werner repeatedly denied employment opportunities to deaf individuals.

The verdict highlights the extreme cost of non-compliance for employers. Following a four-day trial, the jury awarded \$75,000 in compensatory damages for Robinson's "emotional pain, suffering... [and] inconvenience," but also awarded \$36 million for Werner's "malice or reckless indifference" in discriminating against Robinson.

The Americans with Disabilities Act ("ADA") prohibits discrimination on the basis of disability. Specifically, the ADA requires employers to provide reasonable accommodation to qualified employees with a disability. Qualified employees are able to complete the essential duties of their position with or without reasonable

accommodation. Additionally, the ADA prohibits employers from refusing to hire a qualified applicant with a disability. A qualified applicant satisfies job requirements such as education, experience, skills, and licenses, and is able to perform the essential functions of the position, with or without reasonable accommodation.

An ounce of prevention is worth a pound of cure, or in the case of *Werner*, millions of pounds of cure. Employers should take care to review their hiring and reasonable accommodation policies and procedures to ensure they are up-to-date and in full compliance and, perhaps above all, make certain their managers have the training they need to abide by the law and stay out of very costly trouble.

If you have any questions regarding your EEO practices, please do not hesitate to contact any member of Gardner Skelton's employment team.



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