

**SOUTH DAKOTA BOARD OF REGENTS**

**Budget & Finance**

**AGENDA ITEM: 6 – C**

**DATE: October 7-8, 2015**

\*\*\*\*\*

**SUBJECT: Fair Labor Standards Act Proposed Regulations**

On March 3, 2014, President Obama instructed the U. S. Department of Labor (DOL) to “propose revisions to modernize and streamline the existing overtime regulations [as outlined under the Fair Labor Standards Act (FLSA)]. In doing so, you (DOL) shall consider how the regulations could be revised to update existing protections consistent with the intent of the Act; address the changing nature of the workplace; and simplify the regulations to make them easier for both workers and businesses to understand and apply.”<sup>1</sup> The Fair Labor Standards Act is the law that establishes minimum wage, overtime pay, and regulates the employment of minors.

The last major update to the FLSA regulations was in 2004 when the salary threshold for exemptions was set to \$455 per week (\$23,660 per year). With the proposed new rules, the department is seeking to update the salary level required for exemptions, to simplify the identification of nonexempt (overtime eligible) employees, and make the executive, administrative and professional employee exemption (exempt from overtime) easier for the employer and worker to understand and apply.

On July 5, 2015, the Department of Labor opened a 60-day public comment period which ended on September 4, 2015. The proposed changes include:

- Increasing the salary threshold for exemptions from \$455 per week (\$23,660 per year) to \$970 per week (\$50,440 per year);
- Increasing the annual salary for highly compensated employees from \$100,000 per year to \$122,148 per year;
- Implementing automated updating of the standard salary that is tied to the Consumer Price Index (CPI-U) annually;

<sup>1</sup> <https://www.whitehouse.gov/the-press-office/2014/03/13/presidential-memorandum-updating-and-modernizing-overtime-regulations> (Retrieved September 4, 2015)

\*\*\*\*\*

**RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR**

Information and discussion.

- Including nondiscretionary bonuses in calculating exempt or white collar employees' or executive, administrative and professional (EAP) salary; and
- Modifying the duties required for EAP exemptions.

On September 4, 2015, the College and University Professional Association for Human Resources (CUPA-HR) submitted a lengthy response to the proposed rules. This well-articulated response highlighted areas of concern that impact the Regental institutions. Those concerns included:

- The proposed Department of Labor salary levels failed to take into account regional and industry sector differences in pay;
- The proposal does not take into consideration the purpose and history of the minimum salary levels;
- The regulations do not include lower salary levels for nonprofit and public sector employers;
- The Department of Labor may not have the authority to impose automatic updates to the salary levels;
- The proposed regulations would limit the amount of time exempt employees could perform non-exempt duties; for example, a manager who supervises employees and serves customers at the same time may be eligible for overtime;
- The proposed minimum salary levels could have a significant impact on higher education institutions and students;
- The proposed regulations may result in reclassifications that adversely impact employees' and employers' flexibility since not all jobs lend themselves to hourly work;
- The proposed regulations may result in reclassifications that negatively impact employee professional development opportunities and career advancement;
- The work performed by postdocs, farm managers, researchers and athletic trainers/coaches do not fit well within hourly job classifications;
- The regulations do not include a provision for a phased in timetable.<sup>2</sup>

The Department of Labor will review all responses submitted by the September 4, 2015 deadline. At this time, there is no clear indication about a timeline for the completion of the Department's review or an implementation schedule. From start to finish, the proposed changes to the overtime rule may take as little as a few months or as long as several years.<sup>3</sup>

---

<sup>2</sup> College and University Professional Association of Human Resources issued on September 4, 2015 in Response to Proposed Rulemaking; Defining and Delimiting the Exemption of Executive, Administrative, Professional, Outside Sales and Computer Employees (80 Fed. Reg. 38515, July 6, 2015) (RIN 1235-AA11)

<sup>3</sup> Nicolas, M., Tischler, R. and Thompson, D. "Labor & Employment Law Blog. 60 Day Public comment Period Commences on Proposed FLSA Overtime Exemption Rule Changes". July 7, 2015, Posted in Sheppard Mullin: Exempt, Fair Labor Standards Act (FLSA), Wage and Hour

The HR Professionals within the Board Office, Regental institutions, and the South Dakota Bureau of Human Resources have been monitoring the news, webinars and professional organizations regarding the proposed rules. Board of Regents HR Professionals will be holding a planning session on this topic during their October 2015 HR Retreat. Additional updates will be provided once more concrete information is available from the U. S. Department of Labor.