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Employers Facing New Rules on Overtime, Reporting Pay Data

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Early March has come in like a lion for employers, who are now facing potential new federal rules on overtime and classification, as well as changes to how much information they need to be reporting to the Equal Employment Opportunity Commission regarding pay rates broken down by gender and race.

Labor Department Proposes Expanding Overtime Coverage

The Department of Labor (DOL) has proposed new rules mandating when certain workers must receive overtime pay. Under the proposed rule, made public on March 7, 2019, to be exempt from overtime, an employee would have to earn a salary threshold of \$35,308 per year, up from \$23,660.

No changes have been proposed to the exempt duties tests, so in addition to meeting the salary threshold, an exempt employee's job must still involve primarily executive, administrative or professional duties. The DOL anticipates that over 1 million additional Americans would become eligible for overtime pay under the proposed rule.

The current overtime rules have not been updated since 2004, during the Bush administration. The Obama administration had proposed a higher minimum salary, mandating overtime pay to those earning less than about \$47,000 annually. A federal judge in Texas suspended the rule, however, just as it was about to take effect.

Unless exempt, employees covered by the Fair Labor Standards Act must receive at least time and one-half their regular rate of pay for any time worked in excess of 40 hours in a workweek.

The newly proposed rule is subject to a 60-day comment period. A final rule will be published after comments have been considered. The DOL anticipates the rule will become effective January 2020.

New Ruling Requires Companies to Report Gender, Racial Pay Data

Last week, a federal judge in the U.S. District Court for the District of Columbia reinstated an Obama-era rule that required greater disclosure of private workforce pay data. The rule, which was suspended in 2017 by President Trump's administration, requires businesses with at least 100 employees, and federal contractors with at least 50 employees and a contract of \$50,000 or more with the federal government, to file an EEO-1 form that discloses pay information based on gender, race and ethnicity.

Employers already submit demographic data to the EEOC annually via the EEO-1 form. The new disclosures would require them to report the racial and gender makeup of employees in each job category—executive, professional, sales, etc.—within 12 pay ranges for each of a company's locations. The demographic data reported to the EEOC is kept confidential, and the pay data would be, too.

The EEO-1 filing deadline this year is May 31. It remains to be seen whether the ruling will be appealed and stayed pending appeal. In the meantime, affected employers should begin to gather this pay data and operate under the assumption that they will soon have

to comply with the revised EEO-1 rules.