

Federal Law Alerts - October 2019

SSA Contribution and Benefit Base

On October 10, 2019, the U.S. Social Security Administration (SSA) announced that the 2020 Social Security wage base will be \$137,700, an increase of \$4,800 from the 2019 wage base of \$132,900.

The SSA's Old-Age, Survivors, and Disability Insurance (OASDI) program limits the amount of earnings subject to taxation for a given year. The OASDI [tax rate](#) for wages paid in 2020 is set by statute at 6.2 percent each for employees and employers. Thus, an individual with wages equal to or more than \$137,700 would contribute \$8,537.40 to the OASDI program in 2020, and their employer would contribute the same amount. The OASDI tax rate for self-employment income in 2020 is 12.4 percent.

These rates are effective January 1, 2020.

Read the [announcement](#)

DOL Proposed Rule for FLSA Tip Provisions

On October 7, 2019, the U.S. Department of Labor (DOL) announced a notice of proposed rulemaking (NPRM) for tip provisions of the Fair Labor Standards Act (FLSA) implementing provisions of the Consolidated Appropriations Act of 2018 (CAA) and codifying existing Wage and Hour Division (WHD) guidance into a rule.

The CAA prohibits employers from keeping employees' tips. The NPRM would allow employers who do not take a tip credit to establish a tip pool to be shared between workers who receive tips and are paid the full minimum wage and employees that do not traditionally receive tips, such as dishwashers and cooks.

The proposed rule would not impact regulations providing that employers who take a tip credit may only have a tip pool among traditionally tipped employees. An employer may take a tip credit toward its minimum wage obligation for tipped employees equal to the difference between the required cash wage (currently \$2.13 per hour) and the federal minimum wage. Establishments utilizing a tip credit may only have a tip pool among traditionally tipped employees.

Additionally, under the proposed rule an employer may take a tip credit for any amount of time an employee in a tipped occupation performs related non-tipped duties with tipped duties. For the employer to use the tip credit, the employee must perform non-tipped duties contemporaneous with, or within a reasonable time immediately before or after, performing the tipped duties. The proposed regulation also addresses which non-tipped duties are related to a tip-producing occupation.

The proposed rule would also:

- Explicitly prohibit employers, managers, and supervisors from keeping tips received by employees;

- Remove regulatory language imposing restrictions on an employer's use of tips when the employer does not take a tip credit. This would allow employers that do not take an FLSA tip credit to include a broader group of workers, such as cooks or dishwashers, in a mandatory tip pool.
- Incorporate in the regulations, as provided under the CAA, new civil money penalties, currently up to \$1,100, that may be imposed when employers unlawfully keep tips.
- Amend the regulations so that an employer may take a tip credit for any amount of time that an employee in a tipped occupation performs related non-tipped duties at the same time as his or her tipped duties, or for a reasonable time immediately before or after performing the tipped duties.
- Withdraw the DOL's NPRM, published on December 5, 2017, that proposed changes to tip regulations as that NPRM was superseded by the CAA.

The NPRM will be available for review and public comment for 60 days. The DOL's current NPRM publishes on October 8, 2019.

Read the [NPRM](#)

EEO-1 Component Two Deadline Extended

As ordered by the court's decision in *National Women's Law Center, et al., v. Office of Management and Budget, et al.*, Civil Action No. 17-cv-2458 (D.D.C.), EEO-1 filers were required to submit Component 2 data for calendar year 2017, in addition to Component 2 data for calendar year 2018, by September 30, 2019. However, in a September 27, 2019 Status Report that was filed in the lawsuit discussing post-September 30th activities, the federal Equal Employment Opportunity Commission (EEOC) stated that so long as the court's order is in effect stating that the collection will not be complete until it reaches what the court has determined to be the target response rate, the EEOC will continue to accept Component 2 data for 2017 and 2018. Subsequently, Component 2 data for 2017 and 2018 will be accepted beyond the original deadline of September 30, 2019.

Read about the [deadline extension](#)

Overtime Update

On September 24, 2019, the U.S. Department of Labor announced a final rule regarding overtime pay. The ruling updates the earnings thresholds necessary to exempt executive, administrative, and professional employees from the Fair Labor Standards Act's minimum wage and overtime pay requirements, and also allows employers to count a portion of certain bonuses/commissions toward meeting the salary level.

In the final rule:

- The "standard salary level" increases from \$455 per week to \$684 per week (equivalent to \$35,568 per year for a full-year worker);
- The total annual compensation requirement for "highly compensated employees" increases from \$100,000 per year to \$107,432 per year;
- Employers may use nondiscretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10 percent of the standard salary level; and
- The special salary levels for workers in U.S. territories and the motion picture industry was revised.

The final rule is effective on January 1, 2020. Read the [final rule](#)