

CLIENT ALERT

Obama Administration Moves to Increase the Reach of Federal Overtime Laws

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Virtually all employers could be impacted by the Obama Administration's direction to the Secretary of Labor to update the regulations governing eligibility for overtime under the Fair Labor Standards Act. The details remain sparse, and final new regulations are a long way off, but the Presidential Memorandum signed last Thursday leaves little doubt that the Administration's direction is to trigger fundamental change in the overtime law in order to address what it calls an "erosion" in overtime protections that have resulted in "millions of Americans lack[ing] the protections of overtime and even the right to the minimum wage."

The Department of Labor's regulatory efforts are likely to focus on FLSA regulations pertaining to the salary and job duties of employees who may be deemed exempt from overtime. First, the Administration will certainly seek an increase in the salary threshold below which employers must pay overtime, regardless of employees' job duties. Since 2004, that salary level has been set at \$455 per week. The Administration has noted that the current threshold is below the current federal poverty line for a family of four.

Second, DOL will also likely pursue changes to several of the FLSA's "white collar" exemptions. Current regulations exempt employees working in various professional, executive, administrative, computer, and outside sales positions. According to the Administration, the current regulations, last updated in 2004, result in the denial of overtime to large numbers of employees who, day-to-day, perform mostly manual or clerical work. DOL is likely to make the tests for these exemptions more stringent. One potential change would be to redefine the "primary duty" aspect of the regulations, to include a requirement that a certain percentage of time be devoted to exempt duties. It is likely that the retail and restaurant industries, in which significant numbers of supervisors and/or assistant managers perform both supervisory and manual work, will become targets of the proposed changes.

This regulatory initiative will take several months to complete. To date, DOL has not published any proposed regulations as required by the Administrative Procedure Act. This matter was not listed on Department of Labor's latest semi-annual list of impending regulatory activity. Yet the White House's highly-publicized push could prompt accelerated action. The business community seems likely to oppose these regulations, arguing that they will increase costs and discourage hiring. Overall, if and when the revised regulations come on line, they will require significant attention and efforts by employers, who will be required to once again review the status of many categories of employees and evaluate significant compensation changes.

We will discuss the Administration's announcement and these upcoming regulatory efforts during our next Third Thursday webinar on March 20. We invite you to join our discussion by [clicking here for more information and to register](#).

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