

DOL Targets February 2015 for New Overtime Rules

In March 2014, President Obama directed the DOL to modernize and streamline long-standing regulations governing which employees are entitled to overtime pay. In May, the DOL set a target date of November to propose new overtime rules but later said the release would be delayed. Last month, the DOL announced that it would propose new FLSA regulations for executive, administrative, and professional employees in February 2015. Because the DOL would still need to complete other steps before any changes could become final, it is unlikely new regulations would be in place before next summer.

Background

The Fair Labor Standards Act (FLSA) provides a minimum wage and overtime exemption for any employee employed in a bona fide executive, administrative, professional capacity, or as an outside salesperson. On March 13, 2014, President Barack Obama [directed](#) the secretary of labor to modernize and streamline the existing overtime regulations by narrowing the scope of the so-called “white-collar” exemptions for executive, administrative, and professional employees. (See our [March 14, 2014](#) *For Your Information*.)



In its semiannual regulatory agenda released on May 23, the DOL [set](#) a target date of November 2014 to propose new regulations “defining and delimiting” the FLSA’s overtime exemptions for executive, administrative, professional, outside sales, and computer employees. (See our [June 4, 2014](#) *For Your Information*.)

The DOL’s Timeline

Late last month, the DOL published its [Agency Rule List - Fall 2014](#) that included, among other agenda items, a [proposed rule](#) to implement the president’s directive to change the FLSA’s white collar exemptions. Neither the president’s directive nor the DOL have offered any specifics. If, as anticipated, the DOL acts to raise the minimum salary threshold of \$455 per week and/or change the current job duties tests, a sizeable number of employees who are currently exempt will likely become overtime-eligible when the new regulations take effect.

Because proposed changes to current overtime regulations are subject to the Administrative Procedure Act's rulemaking requirements, the DOL will need to complete a number of steps before any changes become final. Once released, the proposed regulations will be subject to a public comment period — typically between 30 and 90 days — to allow stakeholders to share their views. Following the comment period, the DOL would hear testimony, review and respond to the comments received, and secure approval of final regulations by the Office of Management and Budget (OMB). While OMB review averages about 60 days, it may take as long as 120 days.

Even if the rulemaking process moves expeditiously, it is unlikely that employers will face new regulations before next summer. If the DOL finalizes the regulations before the Obama administration ends, legal challenges could further delay their implementation.

Comment. When the DOL last updated the regulations in 2004, it took more than 18 months to implement the changes. Because the DOL is expected to propose more substantial changes in 2015, they may take longer to implement.

In Closing

The DOL has now said that it expects to publish new overtime rules by the end of February 2015, three months later than previously announced. Because the DOL will need to complete a number of rulemaking steps before any changes become final, it is unlikely that new rules would be finalized before next summer. Since the new rules will have major implications for employers, we will continue to share details as they become available.

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