

DOL to Propose Overtime Regulations This Spring

During a March 18 hearing on the president's FY 2016 budget request for the DOL, Labor Secretary Thomas Perez said that the agency was "working overtime" on the proposed revisions to the FLSA's white-collar exemptions, and expects they will be completed in the coming months. While the secretary provided no specifics, the proposed rules are likely to have major implications for employers.

Background

The Fair Labor Standards Act (FLSA) establishes federal minimum wage and overtime pay standards that govern how and how much public and private sector employers must pay their employees. Employees covered by the FLSA must be paid at least the federal minimum wage (currently \$7.25 per hour) and, in most cases, overtime at time and one-half of the employee's regular rate of pay for all hours worked in excess of 40 in any workweek.

FLSA regulations, enforced by the DOL's Wage and Hour Division, provide exemptions from federal minimum wage and overtime requirements for salaried "executive, administrative, and professional" employees (so-called "white-collar" employees) who satisfy minimum earnings and job duties tests. Under current rules, an employee must be paid a minimum salary of \$455 per week and perform specific job duties to qualify as exempt.

In March 2014, President Barack Obama directed the secretary of labor to modernize and streamline the long-standing regulations that govern which employees are entitled to overtime pay. (See our [March 14, 2014 FYI Alert](#).) Although the DOL initially set a November 2014 target date to propose new overtime rules to implement the president's directive to revise the FLSA's white collar exemptions, it later extended the timeline, delaying release of the new overtime rules until the end of February 2015. (See our [June 4, 2014](#) and [December 8, 2014](#) editions of *For Your Information*.)



Latest Timeline

On March 18, the [House Education and Workforce Committee](#) held a [hearing](#) on the president's FY2016 budget request for the DOL. During the hearing, Labor Secretary Thomas Perez explained that the department was "working overtime" on the overtime proposal. He told the committee that he hoped the department's proposed

revisions to the white-collar overtime regulations would be completed in the coming months and published sometime this spring, but provided no further specifics on the timing — or substance — of any release. While the DOL is widely expected to propose raising the salary threshold and narrowing eligibility for the white-collar exemptions by changing the current job duties tests, it is unclear what the new threshold or qualifying duties may be.

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 they can become final. Once released, the proposed regulations will be subject to a public comment period — typically between 30 and 90 days. Following the comment period, the DOL will 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 fall. If the DOL finalizes the regulations before the Obama administration ends, legal challenges could further delay their implementation.

Comment. The overtime rules have only been updated once since 1975. When the DOL updated the regulations in 2004, it took more than 18 months to implement the changes. If, as expected, the DOL proposes more substantial changes in 2015, the process may take longer.

In Closing

It's been more than a year since President Obama directed the secretary of labor to "restore the common sense principles" related to overtime, but proposed regulations have not yet been issued. Because the DOL will need to complete a number of steps after a proposal is released but before any changes become final, it is unlikely that the rulemaking process would be concluded before next fall. Since the new rules will have major implications for employers, we will share details with you as they become available.

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