

DOL on Overtime: Targets July for Final Rule

In June, the DOL unveiled proposed rules that would expand overtime eligibility to an estimated 5 million workers by more than doubling the minimum salary threshold for the so-called “white-collar” exemptions. The public comment period ended on September 4, and the DOL is reviewing the comments it received. The DOL has now announced a July 2016 target for the release of a final rule. Given the potentially major implications of the anticipated changes, employers will want to monitor developments closely.

Background

The Fair Labor Standards Act (FLSA) establishes federal minimum pay standards for public and private sector employers. 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.

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. Last year, President Obama directed the secretary of labor to modernize and streamline those regulations. (See our [March 14, 2014 FYI Alert](#).) On June 30, the DOL unveiled the proposed expansion of overtime eligibility for white-collar workers. By more than doubling the minimum salary threshold from the current \$455 a week (\$23,660 annually) to a projected 2016 level of \$970 per week (\$50,440 annually), the proposal could increase the number of employees eligible for overtime pay by roughly 5 million. (See our [June 30, 2015 FYI Alert](#).)

Comments Are In

On July 6, the DOL [published](#) its proposed rule on the FLSA’s white-collar exemptions, triggering the beginning of a 60-day public comment period. Despite requests from lawmakers and various stakeholders, the DOL declined to extend the comment period. By the time the period closed on September 4, the agency had received more than 264,000 comments from employers, employees and other



interested persons. The DOL is currently reviewing the comments it received, and deciding whether to make any changes to the proposed rule before finalizing and implementing it.

When Will Rule Be Finalized?

The DOL previously signaled its intent to issue a final rule in 2016. But when? Given the large volume of comments submitted to the agency, many have speculated that issuance of a final rule on the white-collar exemptions could be delayed.

The Solicitor of Labor, M. Patricia Smith, was reported to have told attendees at a recent American Bar Association conference that the DOL was unlikely to issue a final rule until "late 2016." In its recently published [Fall 2015 Semiannual Regulatory Agenda](#), the DOL targeted publication of the rule for July 2016. While the effective date of the new rule remains uncertain, employers are expected to have at least 60 days after its release to come into compliance.

In Closing

While it is uncertain when the new rule will be released, it is certain that changes of the magnitude proposed would substantially alter long-standing pay practices for most employers. The dramatic expansion of overtime eligibility to an additional 5 million workers would have potentially major implications for employers' bottom lines. As we await final rules, employers will want to assess the potential financial, operational and organizational impacts of the anticipated changes and develop strategies to address them.

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