

FYI[®] Alert

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Overtime Rules at OMB

In June 2015, the DOL proposed rules that would expand overtime eligibility to millions of workers by more than doubling the minimum salary threshold for the so-called “white-collar” exemptions. Since the public comment period ended last September, there has been much speculation about when the DOL would release the final rule. On March 14, the DOL submitted the final rule to the Office of Management and Budget for regulatory review. While the DOL previously targeted a July 2016 release, the final rule may be issued sooner. Given its potential implications, 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 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. At President Obama’s direction, the DOL reviewed existing regulations, and subsequently proposed narrowing the exemption for white-collar workers. By more than doubling the minimum salary threshold from the current \$455 per week/\$23,660 annually to a projected 2016 level of \$970 per week/\$50,440 annually, the proposal was expected to extend overtime eligibility to nearly 5 million white-collar workers who are currently exempt.

(See our [June 30, 2015 FYI Alert](#).)

By the time the 60-day public comment period ended, the DOL had received more than 264,000 comments from employers, employees and other interested persons. Since the DOL targeted July 2016 for release of a final rule, there has been much speculation about whether the agency would meet that timeline and what, if any, changes the final rule would contain. (See our [December 2, 2015 For Your Information](#).)



Final Rule Advances

On March 14, the DOL submitted the final overtime rule to the Office of Management and Budget (OMB) for regulatory review as part of the normal federal rule-making process. The period for OMB review is limited by Executive Order to 90 calendar days, but may be extended by the head of the rulemaking agency or the OMB director. While review generally takes 30 to 60 days, there is no minimum period required.

While the DOL previously targeted a July 2016 release, the final overtime rule may be issued sooner. If OMB follows the timetable it used to review the proposed rule last year, publication of the final rule could occur by mid-May. If the final rule contains changes of the magnitude proposed, it could have potentially profound implications for employers' bottom lines. However, until OMB clears the final rule for publication in the *Federal Register*, both its content and effective date remain uncertain.

Comment. When the FLSA's overtime rules were last changed in 2004, the DOL provided 120 days between their publication and effective date. Looking forward to the presidential election in November, the DOL may be considering a shorter implementation window in an effort to ensure the changes are firmly in place before the administration changes. However, congressional actions or legal challenges may still delay their implementation.

In Closing

Targeted by the DOL for release in July 2016, the final overtime rule may be issued earlier. As we await the final rule, employers will want to assess the potential financial, operational and organizational impacts of the anticipated changes and develop strategies to address possible scenarios.

Authors

Nancy Vary, JD
Abe Dubin, JD

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