



Big Changes Are Coming to Overtime Laws in 2016

On March 13, 2014, President Obama signed a Presidential Memorandum directing the United States Department of Labor (DOL) to update the regulations regarding white-collar workers. In June 2015, the DOL announced its proposed regulations, which call for sweeping changes that would more than double the minimum annual salary employers must pay white-collar employees (from \$23,660 to \$50,400) to exempt them from overtime pay. The DOL also proposed raising the minimum salary level for highly compensated employees from \$100,000 to more than \$120,000 per year.

Along with the proposed regulations, the DOL requested public comment on other issues that will likely have a significant impact on employers, including (1) a proposed mechanism for automatically adjusting the standard salary levels, (2) whether nondiscretionary bonuses should be included in calculating the standard salary threshold (currently, employers may not include such bonuses in these calculations) and (3) whether the white-collar duties tests should be modified along with the proposed salary increases (similar to California laws requiring employees to spend a majority of their time performing exempt duties).

Conservative estimates indicate that approximately five million currently exempt, salaried employees may be affected by the DOL's proposed increased salary threshold. Moreover, the DOL estimates that as a result of these proposed changes, employers could pay additional costs of between \$239.6 million and \$255.3 million per year.

PUBLIC COMMENTS HINT AT THE HARDSHIPS EMPLOYERS MAY FACE

Between the publication of the proposed regulations in the Federal Register and the end of the time period for comments on September 4, 2015, the DOL received more than 250,000 comments regarding the proposed changes. While many employees noted their approval regarding the proposed increase to the salary threshold, many employers expressed significant concerns. Numerous employers and trade associations pointed out potential flaws in the proposed regulations, including that (1) the proposed increases do not take into consideration the unique needs of different industries, (2) a rigid duties test would run counter to the realities of the modern workplace, and (3) pay fluctuations in various geographic regions would have a disproportionately negative impact on employers in states with a lower cost of living. The comments made clear that certain industries, especially hospitality, food service and retail, would be significantly impacted by these changes. Many employers also noted that they would be required to reclassify current managerial employees to nonexempt workers under the proposed regulations.

Continued

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WHEN SHOULD WE EXPECT THE FINAL RULE?

On November 20, 2015, the Office of Management and Budget published its Fall 2015 Unified Agenda and Regulatory Plan (Plan). According to the [timetable](#) in the Plan, the final rule is slated for publication in July 2016. However, at the annual conference of the American Bar Association's Labor & Employment Law Section, Solicitor of Labor M. Patricia Smith appeared to indicate that the DOL's final revised regulations may be issued later than expected – in late 2016, leaving employers to speculate as to the timing of the final regulations.

WHAT SHOULD EMPLOYERS DO?

Regardless of whether the regulations will be released in mid- or late 2016, employers should be prepared for these changes and understand the significant impact they will have on their businesses. Employers of all sizes and in all industries should review their job descriptions to determine whether they accurately

reflect employees' job duties and the skills necessary to perform each job, paying close attention to the duties necessary to fall within the various overtime exemptions.

Employers should also conduct a self-audit to determine what changes they may need to make to employee classifications. At a minimum, employers should identify those employees in exempt positions who currently fall near or below the proposed salary threshold of \$970 per week, as well as those who currently fall under the "highly compensated" exemption.

Once the employer has gathered this information, it should determine a plan of action for complying with the new regulations. This may include increasing minimum salaries for exempt employees or reclassifying employees as nonexempt, hourly workers. Employers should also have a plan in place to communicate these changes to employees, who may be resistant to the changes imposed by these new rules, and to train their managers regarding the implications of the new regulations. Wilson Elser's Employment & Labor practice lawyers are available to assist employers in preparing for the anticipated changes.



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