

President Directs Department of Labor to Update White-Collar Overtime Exemption Regulations

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Since its enactment in 1938, the Fair Labor Standards Act ("FLSA") has generally required employers to pay most employees overtime time and a half for all hours worked over 40 during the workweek. Of course, certain employees that are employed in "white collar" jobs are exempt because, in part, they are paid a regular salary each week, regardless of the number of hours actually worked during the week. The exempt positions include those individuals employed in an executive, professional or administrative capacity.

Most challenges to employer classification of individuals as exempt from overtime center around the administrative exemption. To meet this exemption, the employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers. Further, the employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance. Finally, the individual must be paid a minimum salary of \$455/week, or \$23,660/annually.

The Department of Labor ("DOL") is the federal agency that administers, interprets and enforces the FLSA. The DOL last updated the white-collar exemptions in 2004 and made changes to not only the requirements imposed on an employer to establish a position as exempt, but also raised the minimum salary to its current amount. Since enactment of the current regulations, there has been a significant surge in both DOL and employee litigation asserting that the employer has misclassified a job as exempt from overtime.

On March 13, 2014, President Obama issued a Memorandum he directed to the DOL requesting it to update the overtime exemption regulations. The President asserted that "regulations regarding exemptions from the Act's overtime requirement, particularly for executive, administrative, and professional employees (often referred to as "white collar" exemptions) have not kept up with our modern economy. In turn, the President directed the DOL "to propose revisions to modernize and streamline the existing overtime regulations."

Employers should anticipate that the DOL will publish proposed revisions to the existing regulations and will then solicit public comments. Any final changes to the existing regulations may likely take between 18 and 24 months before any changes are announced. In addition to updating the required elements for an exempt position, the DOL will likely consider a significant increase in the minimum salary for an exempt position.

The current minimum salary amount that was established in 2004 is the equivalent today to \$553.00/week or \$28,756.00/annually. Measured from the prior minimum salary that was set in 1975, the equivalent amount today would be the equivalent of \$970.00/week or \$50,440.00/annually. Employers should anticipate that the DOL will likely propose a significant increase to the minimum weekly salary amount for an exempt position. If an employer declines to increase an exempt individual to any increased minimum salary, the employee will be entitled to time and a half even though the employee otherwise meets the primary duties elements of a white collar exemption.

By Tom Berry