



## Obama Will Move to Expand Overtime Pay, Narrow FLSA Exemptions

This week, President Obama is expected to order the U.S. Department of Labor ("DOL") to revise major exemptions from overtime under the Fair Labor Standards Act ("FLSA"). These changes would make certain white collar exemptions more narrow, thereby increasing the number of employees eligible for overtime. President Obama's upcoming directive is expected to include at least two major revisions to the DOL's regulations, which could significantly increase regulatory burdens on and costs to American businesses.

Currently, eligible employers are not required to pay overtime to workers whose duties meet the requirements of certain exemptions set forth in the DOL's regulations and who earn a minimum salary of at least \$455 weekly. The President's directive to the DOL is expected to increase this salary threshold, although the amount of this increase remains uncertain. President Obama is also expected to narrow the circumstances that will qualify for the executive, administrative, and professional exemptions from overtime, also referred to as the "white collar" exemptions. It is anticipated that the directive will require overtime pay for millions of additional workers in specific positions and industries, such as fast-food managers, loan officers, and computer technicians who may currently be classified by their employers as exempt. And, to further narrow the application of exemptions, the proposed changes could impose a requirement that workers perform a minimum percentage of qualifying work before being exempted from overtime pay.

The President's planned use of executive authority to direct regulatory changes expanding overtime pay obligations is part of his ongoing effort to increase wages for lower- and middle-class workers, but it is not clear that his approach would accomplish that goal. This directive could have the effect of causing employers to reduce pay rates and hire more part-time and full-time workers to avoid overtime hours. If the President proceeds with his directive, the long-term impact will likely depend on whether the DOL focuses on clarity and practicality in its regulations, the absence of which has led to a significant increase in wage and hour litigation, including collective and class actions. Crafting regulations that are unambiguous and can be easily followed by employers is especially crucial given that under the current Administration, the DOL has discontinued efforts and programs previously available to employers striving to comply with wage and hour laws. In particular, the DOL no longer issues administrative opinion letters in response to specific employer inquiries about the application of particular exemptions and other FLSA rules, and the DOL's previous practice of routinely assisting employers with self-audits appears to have fallen by the wayside. Many of the problems cited by the Administration for its wage and hour agenda could be avoided if the DOL were able to offer more meaningful compliance assistance to employers.

As always, we will closely monitor any developments and keep you informed as the details of the President's plan and the DOL's response become available.

— [Jennifer L. Anderson](#)

*Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:*

**Jennifer L. Anderson**  
*Partner, Jones Walker LLP*  
Four United Plaza  
8555 United Plaza Blvd  
Baton Rouge, LA 70809  
225.248.2040 tel  
[janderson@joneswalker.com](mailto:janderson@joneswalker.com)

[Jones Walker Labor & Employment Practice Group](#)  
[www.joneswalker.com](http://www.joneswalker.com)

*This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own attorney concerning your own situation and any specific legal questions you may have.*