



## DOL's Expansion of Overtime Pay – Update

In March, we [reported](#) that President Obama was expected to order the U.S. Department of Labor ("DOL") to revise major exemptions from overtime under the Fair Labor Standards Act ("FLSA") with the goal of increasing the number of employees eligible for overtime—and thereby increasing the regulatory burdens on and costs to American businesses.

**Did that happen?** Yes. The President ordered the DOL to modernize and streamline the overtime regulations and exemptions. Because the workplace has changed, he felt neither the FLSA nor its current regulations were in line with our modern economy. As expected, President Obama's directive was focused on increasing the pool of employees entitled to overtime pay, citing examples of fast food supervisors, retail managers and office workers. He also expressed concern that, under the current exemption regulations, employees who earn as little as \$455 per week on a salary basis (or about \$23,660 annually) may be excluded from overtime pay, and at this minimum salary, a white collar worker supporting a family of four can earn a salary below today's poverty line.

**What does this mean for you?** In light of the President's comments, we can expect an effort to increase the minimum required salary for employees who are exempt from overtime. We can also expect that the duties test, which is used to determine whether employees perform tasks that qualify them for exemption, will be modified. The President's goal is obviously to make more workers eligible for overtime pay, but whether his approach will accomplish this remains to be seen as employers can still limit the number of hours employees work each week to avoid overtime.

**So, what happens next?** The proposed rule titled, "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees," is likely to be published in the *Federal Register* in November 2014, according to an agenda recently issued by the DOL wherein it set this deadline. The purpose of a proposed rule is to announce and explain the DOL's plan to address a problem or accomplish a goal. Even if the proposed rule is actually released in November, the changes will not go into effect at that time because any proposed changes to the regulations are subject to a rulemaking process. These steps include a public comment period that typically lasts at least 30 to 60 days. The DOL will then take time to consider any public comments and draft a regulation that responds to same. And, a final draft of the regulations will need to be prepared and approved, which normally takes about 60 days but could take up to 120 days. This means it will likely be the spring of 2015, at the very earliest, before you see any changes. Then, there could be public opposition or legal challenges that might delay the implementation of the regulations further.

**What, if anything, can or should I do now?** At this point, there is little guidance available for employers about how any new rule will affect their businesses. That said, it will be critical in coming months to evaluate the proposed rule and determine what, if any, potential impact they will have on your business and workforce. This is particularly true since the wage and hour litigation epidemic continues, and with the President and the DOL focusing so much attention on the FLSA, we anticipate the number of these cases filed will continue to grow. This might be a good time to begin getting your house in order and ensuring that you comply with applicable wage and hour laws in anticipation of regulatory

overhaul. As always, we will closely monitor any developments and keep you informed as the details of the proposed rule become available.

— [Jennifer L. Anderson](#) and [Mary Margaret LeBato](#)

*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:*

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