



Overtime Costs May Soon Increase Significantly

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Most employees covered by the Fair Labor Standards Act ("FLSA") must be paid at least one and one-half times their regular rate of pay for any hours they work beyond 40 in a workweek. **However, the FLSA contains some exemptions to the overtime requirement, including what are known as "white collar" exemptions.** The FLSA's white collar exemptions exclude certain executive, administrative, and professional employees from overtime requirements. Certain computer professionals and outside sales employees are also exempt.

Currently, to qualify for exemption, a white collar employee generally must:

- be salaried, meaning that they are paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the "salary basis test");
- be paid at least a specific salary threshold, which is \$455 per week (the equivalent of \$23,660 annually for a full-year employee) in existing regulations (the "salary level test"); and
- primarily perform executive, administrative, or professional duties (the "duties test").

Believing the current overtime rules to be outdated and depriving millions of workers overtime protections, President Obama signed a Presidential Memorandum directing the Department of Labor (DOL) to update the regulations. In June 2015, the DOL's Wage and Hour Division issued a proposed rule that would more than double the minimum salary for the overtime exemption to \$50,440 per year from \$23,660. Changes to the duties test may also be made.

The proposed rule is seen as a major part of President Barack Obama's agenda to raise wages and is at the top of the DOL's list of regulatory priorities in the administration's final full year, but has come under attack from the business community for being needlessly expensive, potentially costing jobs and curtailing career advancement. Ironically, House Democratic leaders, who strongly support the DOL's proposal,

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have expressed alarm over the impact the proposal will have on their staff budgets. According to one House member's Chief of Staff, "Democratic chiefs of staff are freaking out" about finding room in their budget for overtime wages. As stated by another representative, "I feel terrible that I cannot afford to give raises to the staff" because of the budget problems the increase in overtime will cause.

The proposed rule is highly contentious, and the DOL has received and is reviewing nearly 300,000 comments on it. Nevertheless, the DOL is targeting a July 2016 release of final regulations. While federal agencies don't always adhere to proposed timetables, the final regulations, when issued, may extend overtime protections to nearly 5 million white collar workers within the first year of its implementation.

Employers should update their overtime policies and revisit employee classifications as soon as possible to make sure they are in compliance with the current rules. Employers should also analyze the impact the proposed rule would have on their businesses, and begin implementing strategies for dealing with the constraints the impending final regulations will have on their budgets.
