



March 2016

Start Planning! The Department of Labor's White Collar Overtime Rules Are Coming...For Real!

On Monday, March 14, 2016, the Department of Labor (DOL) sent its final rule revising the white collar overtime exemption regulations of the federal Fair Labor Standards Act (FLSA) to the White House Office of Management and Budget (OMB).

The OMB's review is the final step in the regulatory process before the revised regulations are published in the *Federal Register*. Although the OMB has 90 days to review the revised regulations, it typically takes the OMB less time to review regulations and publish them. Thus, a final rule regarding the white collar overtime exemption regulations could be published as early as this spring, about 3-4 months before employers most recently were led to believe.

Though we now know the final rule is coming, much still remains up in the air because it is unclear what the final rule will look like. As most know by now, the DOL's proposed rule issued in July 2015 advocated for the following:

- > Increasing the salary level governing the FLSA's white collar exemptions from \$455 per week (or \$23,660 per year) to about \$970 per week (or \$50,440 per year), and then implementing an automatic adjustment to the salary test on a go-forward basis to ensure the salary levels continue to provide a useful and effective test for exemption under the FLSA;
- > Raising the minimum salary test for the high compensated exemption from \$100,000 per year to \$122,148, and indexing the level to the 90th percentile of weekly full-time employee earnings to ensure the level stays relevant over time; and
- > Seeking further input from stakeholders on whether the DOL should amend the duties test for the respective exemptions. (It is the lack of clarity around the DOL's intentions vis-à-vis the duties test that is

causing the most concern amongst employers, though the latest reading of tea leaves apprises that the DOL is leaving the duties test alone – only time will tell.)

The DOL's apparent and newfound urgency to push the rulemaking forward is likely due to the election year. Regardless of whom the next President will be, or what he or she might do, there is little doubt that this latest action by the DOL provides President Obama a greater chance to push the rule to implementation.

Impact on Employers

Most employers have long known the changes are coming, and we can now confirm that they are -- so best to start planning for them. Although the exact changes and parameters of the final rule remain a bit of an enigma, and the lack of specificity around potential changes to the duties test surely strikes fear in many, employers can certainly plan ahead to ensure compliance with the already proposed salary requirements. The final rule will be upon us shortly.

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