

# CHANGES TO THE OVERTIME RULES: Where Are We Now, And Where Will We Go From Here?

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## What a difference a year makes...

This time last year, employers throughout the country were analyzing their payroll practices and policies in preparation for significant changes that were set to go into effect on December 1, 2016 regarding the minimum salary requirements for employees entitled to receive overtime pay under federal law. One year later, following the results of the Presidential election and various federal court orders, the overtime rules remain unchanged, the proposed changes to the rules under the Obama administration have been disavowed by the current administration, and any potential future changes to the overtime rules (if, in fact, any are proposed) are likely to be far less significant.

Under the Fair Labor Standards Act ("FLSA"), employers are generally required to pay their employees a federal minimum wage (currently, \$7.25 per hour), as well as overtime pay at one and one-half times the employee's regular rate of pay for all hours worked above forty in a work week unless they are deemed to be "exempt" from these requirements under the Act.<sup>1</sup> One such "exemption" to the FLSA applies to any employees who are employed in a "bona fide executive, administrative, or professional capacity." These exemptions are commonly referred to as the "white collar exemptions." In order to qualify for one of these white collar exemptions, the employee must meet all of the following criteria: 1) they must perform executive, administrative or professional capacity duties as established by federal regulations; 2) they must be paid on a salary basis; and 3) they must be paid at least the minimum salary level established by federal regulations. The current minimum salary level is \$455 per week, which equates to \$23,660 annually.

During the Obama administration, the Department of Labor initiated changes to the FLSA regulations that would have

increased the current minimum salary level for white collar exempt employees from \$23,660 per year to \$47,476. These changes to the regulations were set to go into effect on December 1, 2016.

However, the State of Nevada, along with twenty other states and several business organizations, filed suit in federal court in the Eastern District of Texas against the Department of Labor challenging the new regulations and requirements. On November 22, 2016, U.S. District Judge Amos Mazzant issued a preliminary injunction order, which temporarily prevented the new regulations from going into effect until a more detailed review of the regulations could be made by the court. The Obama Department of Labor then appealed the judge's preliminary injunction order to the Fifth Circuit Court of Appeals.

On August 31, 2017, while the appeal of the preliminary injunction order was still pending at the Fifth Circuit, Judge Mazzant issued another order ruling that the proposed changes to the regulations were unlawful and invalid. In the judge's ruling, he stated that by more than doubling the current minimum salary for white collar exempt employees from \$23,660 to the proposed \$47,476, the Department of Labor "has exceeded its authority and gone too far."

On September 5, 2017, the Department of Labor (now under the Trump administration) filed a motion with the Fifth Circuit Court of Appeals to dismiss its appeal of the earlier preliminary injunction order in light of Judge Mazzant's final judgment. The Fifth Circuit granted the Department's request and dismissed the appeal that same day.

<sup>1</sup>This article only addresses federal wage and hour laws. Employers should be aware that various states and municipalities may have different legal requirements.

Although these recent rulings by the federal courts essentially bring an end to the previous attempts by the Obama administration to change the overtime rules, the Department of Labor under the Trump administration has indicated that it will also review the current regulations and determine if more moderate increases to the minimum salary level may be warranted. In that regard, the Department published a request for public comment on changes to the overtime regulations on July 26, 2017, and current Secretary of Labor Alexander Acosta has made public statements that an increase to “something around \$33,000” may be a possibility in the future.

So, to summarize, despite the flurry of governmental and court activity during the past year, the minimum salary level that is required for employees to be exempt from overtime under the white collar exemptions remains the same at \$23,660 per year. In addition, although the current Department of Labor has begun the process of reviewing the overtime rules and indicated that it may be

open to increasing the minimum salary level somewhat, this process will take a significant amount of time and therefore no changes are expected to occur in the near future. In the meantime, employers should continue to keep this issue on their radar as we all wait and see what the next year brings.

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