

President Obama Directs United States Department of Labor to Revise Wage & Hour Law

Labor & Employment Law Update

By Kelly Haab-Tallitsch and Jeffrey Risch on March 13, 2014

Earlier today, President Barack Obama signed a Presidential Memorandum directing his Secretary of Labor to update the regulations to expand the number of employees eligible for overtime under the Fair Labor Standards Act (FLSA). The president was expected to take more specific action based on statements made by White House personnel earlier this week, but he left virtually all of the details to the United States Department of Labor.

The president set the stage for the Department of Labor to narrow the exceptions to the FLSA by discussing the failure of the executive or professional exemption to keep up with inflation. Commonly known as the “white-collar exemption,” the provision allows employers to classify many workers as executive, administrative or professional, and exempt from the overtime laws.

Under the current federal exemption, generally these salaried workers do not have to be paid overtime if they earn no less than \$455 a week and provided their day-to-day duties meet certain qualifications. This \$455 level was raised in 2004 by the Bush administration. The president criticized the level, but did not propose it be raised to a specific amount, as had been expected. Economists allied with the White House have previously proposed doubling the current threshold to \$1,000 a week which, when adjusted to inflation, would make it similar to the original threshold set in 1976. A change this drastic could require employers to pay overtime to millions more employees.

The Presidential Memorandum instructs the Secretary of Labor to update regulations regarding who qualifies for overtime protection to:

- Update existing protections in keeping with the intention of the Fair Labor Standards Act
- Address the changing nature of the American workplace
- Simplify the overtime rules to make them easier for both workers and businesses to understand and apply

Any new requirements aren't expected to go into effect until at least 2015. The Department of Labor is not expected to have a recommendation before the fall. Fortunately, any proposed changes would be subject to public comment before they can be approved. As a politically charged initiative, the suggestion of expanding overtime eligibility is already receiving significant attention from all sides and it is possible that strong opposition could cause the administration to scale back any proposals.

As this topic moves to the forefront, employers can prepare by:

1. Reviewing their current classification of employees as exempt or nonexempt under the current FLSA regulations and state law to ensure current compliance.
2. Reviewing pay policies and work rules to ensure current compliance and identify any that may need to be updated.
3. Ensuring processes are in place to track hours worked.

We will continue to monitor and communicate further developments as they occur.

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