

DOL Takes Final Step Toward Implementation of New Overtime Exemption Rules

Ever since President Obama on March 13, 2014 signed a Presidential Memorandum directing the United States Department of Labor to update the overtime exemption regulations under the FLSA, it has probably been the most talked about employment law issue over the last two years. This is not surprising, as the FLSA applies in both the private and public sector and generally does not distinguish between for-profits and non-profits.

Given the significant potential implications, the process of revising the overtime exemption rules moved along gradually. It took over a year for the DOL to even publish proposed changes, which it did on July 6, 2015 in the Federal Register. Despite numerous requests by various entities to extend the September 4, 2015 public comment period, including from approximately twenty members of Congress, the DOL declined to do so.

On March 14, 2016, the DOL took the final step necessary before implementation of the proposed changes by sending the controversial rules to expand overtime protection to the White House's Office of Management and Budget ("OMB"). OMB can review the rules for a maximum period of 90 days. There is no minimum amount of time required for OMB review. We believe, given the heightened level of public scrutiny of the rules and collateral issues like the Presidential election coming up in November, that OMB should be prepared to do a relatively prompt review within 30 to 45 days. If so, and assuming there is a 60-day grace period between issuance of the final rules and implementation of the final rules, this would mean an effective date of the final rules in late July or early August.

Perhaps the most important question still remains though — will the final rules contain any significant changes to the "duties" tests for the white collar exemptions despite the absence of any specific changes in the proposed rules? Even if not, litigation over the final rules seems inevitable. If so, the screams of foul play from employers will be deafening.

To learn more, contact [John S. Ho](mailto:jho@bsk.com) at 646.253.2320 or jho@bsk.com.



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