

CLIENT ALERT: FLSA White Collar Overtime Exemption Regulation Submitted to Office of Management and Budget for Final Review

On March 14, 2016, the U.S. Department of Labor Wage Hour Division (DOL) submitted the still secret final version of highly-anticipated revised white-collar overtime exemption regulations to the White House's Office of Management and Budget (OMB) for approval — the last step before the final rules are published. The DOL has suggested that the new regulations could expand overtime pay to nearly five million more U.S. employees than under current rules. The new rules will take effect not less than 60 days after being published, meaning that employers could be required to comply with new regulations as early as late summer, 2016.

The Fair Labor Standards Act of 1938 requires employers to pay most employees time-and-a-half for any time worked in excess of 40 hours per week unless they meet tests set out in current regulations. These require employers to demonstrate that, among other things, affected employees have certain duties tests and are paid on a salary or fee basis, at a rate of not less than \$23,660 per year. An early draft of the new regulations would double the salary minimum to as much as \$50,440 per year. Other changes to the rules are also being considered but have not been unveiled. The DOL has estimated that in the first year as many as 4.6 million employees would need to either be reclassified as non-exempt and paid overtime, or receive an increase in their salary to meet the new minimum threshold requirement. (More information regarding the proposed regulations can be found in MBJ's [Client Alert: U.S. DOL Issues Draft Regulations Overhauling White Collar Overtime Exemptions](#)).

In response to the DOL's submission of the final version to the OMB for review, on March 17, 2016, Republican members of both the U.S. Senate and the House of Representatives introduced a bill – the “Protecting Workplace Advancement and Opportunity Act,” S.2707 and H.R. 4773 – that would nullify the proposed overtime rule and require the Secretary of Labor to conduct a thorough economic analysis of the rule's ramifications. Commentators have indicated that this legislation is unlikely to become law.

MBJ is closely monitoring the progress of the new FLSA regulations and will issue a comprehensive Client Alert summarizing the new regulations as soon as they are published.

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