

CLIENT ALERT: President Seeks to Revise Regulations to Restrict FLSA's White Collar Overtime Exemptions

On March 13, 2014, President Obama issued a **Presidential Memorandum** directing the United States Department of Labor ("DOL") to "modernize and streamline the existing overtime regulations" affecting the Fair Labor Standards Act of 1938 ("FLSA"). The presidential directive is vague, but instructs the DOL to revise certain overtime exemptions applicable to white collar employees, including executive, administrative, and professional employees. The President directed the DOL to update existing protections consistent with the FLSA, addressing the changing nature of the workplace, and simplifying the regulations to make them easier to understand.

Under current rules, employees may qualify for one of several exemptions from minimum wage and overtime requirements if their job duties meet certain requirements called the "duties tests." These regulations were last substantially modified in 2004. Most of the exemption tests also require that an employee is compensated on a salary or fee basis at a rate not less than \$455 per week. Among other things, the President has suggested that the DOL consider increasing the minimum qualifying salary level portion of the regulations. The White House has not, however, made any statements indicating how the job duties tests should be altered.

A timeline for implementation of the new overtime regulations is undefined. The rulemaking process is usually lengthy, and the White House has not established an expedited schedule for the proposed changes. Before final regulations can be enacted, federal agencies such as the DOL are required to solicit participation from affected parties, create proposed rules, allow public comment on the proposed rules, and draft final regulations, followed by a waiting period between publication of final regulations and their effective date, thereby allowing regulated parties time to comply. This process often takes months or years.

The purpose of the Presidential Memorandum appears to be to reduce the number of workers who are exempt from the minimum wage and overtime requirement. In his remarks prior to signing the Memorandum, President Obama mentioned the current compensation floor, without expressing a view about a new salary minimum. Commentators have suggested that retail and restaurant employers are most likely to be affected by the proposed changes.

With little initial guidance and the prospect of a protracted and controversial rule-making process, it is unlikely the directive will have an effect on employers in the near term. MBJ will continue to monitor and provide updates on new developments in the regulatory process. In the meantime, employers should continue to review their employee job classifications regularly to ensure that employees are properly classified and compensated.

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