



## U.S. DEPARTMENT OF LABOR WILL RE-WRITE SALARY AND OVERTIME RULE

On July 28, 2017, the U.S. Department of Labor (DOL) submitted a court filing in the Eastern District of Texas asserting that it will not defend the Obama Administration's "Overtime Rule." The decision not to defend the rule in court, essentially means it will not be implemented. However, DOL made clear that it intends to conduct a thorough review to update the overtime policy in subsequent rulemaking.

### Background and Timeline of the Proposed Overtime Regulation

- On March 13, 2014, President Obama signed a Presidential Memorandum directing the DOL to update the regulations defining which white-collar workers are exempt from the Fair Labor Standards Act's (FLSA) minimum wage and overtime requirements. The FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments.
- On July 6, 2015, the DOL issued a Notice of Proposed Rulemaking (NPRM) – [\*Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees\*](#) (80 Fed. Reg. 38515, July 6, 2015). The DOL proposed to update and revise the regulations issued under the FLSA implementing the exemption from minimum wage and overtime pay for executive, administrative, professional, outside sales, and computer employees. To be considered exempt, employees would need to meet certain minimum tests related to their primary job duties and be paid on a salary basis at not less than a specified minimum amount. The standard salary level required for exemption would be \$455 a week (\$23,660 for a full-year worker). The exemption standard was last adjusted in 2004. The DOL proposed to raise the salary threshold under which white-collar workers and highly compensated employees are exempt from FLSA overtime pay requirements to \$913 a week (\$47,476 annually).
- On May 23, 2016, the [\*Final Rule\*](#) was published in the Federal Register and was scheduled to take effect on December 1, 2016. DOL estimated that this change would make 4.2 million currently exempt workers eligible for overtime pay, assuming employers do not change employees' salaries and/or relevant duties in order to avoid exemption.
- November 22, 2016, U.S. District Judge Amos Mazzant III (President Obama appointee) of the Eastern District of Texas, issued a temporary injunction delaying implementation of the rule in order to determine DOL's authority to issue the rule. The injunction was later extended on more than one occasion to allow for the nomination and confirmation of the new Secretary of Labor, Alexander Acosta.
- On July 28, 2017, just two days before the most recent extension was set to expire, DOL submitted a court filing which stated, "The department has decided not to advocate for the specific salary level (\$913 per week) set in the final rule at this time and intends to undertake further rulemaking to determine what the salary level should be. Accordingly, the department requested that the court address only the threshold legal question of the department's statutory authority to set a salary level."