

PRESIDENT SEEKS EXPANSION OF OVERTIME REQUIREMENTS

Employers' Advisor Blog Archives
March 24, 2014

On March 13, 2014, President Obama issued a presidential memorandum directing the secretary of labor to revise the regulations defining the overtime exemptions under the Fair Labor Standards Act (FLSA). The president focused on the act's executive, administrative, and professional exemptions (often referred to as "white collar" exemptions), asserting that the current regulations are outdated and deprive millions of Americans of overtime and minimum wage protections.

The president's memorandum does not propose any specific changes, and any changes that are ultimately made will need to go through the federal rulemaking process. However, areas likely to be revised include the "minimum salary" and "duties" requirements for the white collar exemptions. To qualify for one of the white collar exemptions under current federal law, an employee must be paid at least \$455 per week on a salary basis and perform exempt executive, administrative, or professional duties as specified in the FLSA regulations. In issuing the residential memorandum, President Obama specifically noted that the \$455 minimum salary level has remained unchanged since 2004. He also noted that some states, such as New York and California, already have significantly higher minimum salary requirements (currently \$600 and \$640, respectively, but scheduled to increase in future years). The presidential memorandum also cites perceived inequities in the compensation of certain managerial employees, perhaps foreshadowing a narrowing of the definition of exempt duties under the executive exemption, and possibly other white exemptions as well. The secretary of labor, Thomas E. Perez, echoed the president's concerns regarding these employees in his blog post on the presidential memorandum.

If the regulations are implemented consistent with the direction suggested by the president, employers are likely to face continued challenges designing lawful compensation arrangements, and it is possible that some groups of employees may need to be reclassified to non-exempt status. Stay tuned.

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