

INSIGHTS

## Obama Directs Initiative to Update FLSA Overtime Regulations Likely to Tighten White-Collar Classifications

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President Barack Obama on Thursday signed a Presidential Memorandum directing the Secretary of Labor to update the Fair Labor Standards Act (FLSA) regulations governing which "white collar" employees qualify for overtime exemptions. The stated goal of the initiative is to "modernize" and "streamline" the existing regulations to address the "changing nature of the workplace." According to the President, the revision of overtime regulations will allow more workers the chance to get ahead by simplifying overtime rules to make them easier for both workers and businesses to understand and apply.

The FLSA requires that covered nonexempt employees must receive overtime pay for hours worked over 40 per workweek at a rate not less than one and one-half times their regular rate of pay. However, the FLSA provides certain executive, administrative and learned professional employees an exemption from overtime pay. The President's initiative is expected to revise the regulations to focus on tightening the qualifications for workers classified as bona fide exempt executive, administrative, professional and outside sales employees. Specifically, the updates are expected to raise the minimum salary requirement level and significantly tighten the job-duties requirement tests. As a result, the updates may lead to millions of currently exempt, white collar employees being reclassified as nonexempt and eligible for overtime pay.

Unlike the federal minimum wage law, which necessitates legislative action before change, the FLSA statutorily empowers the United States Department of Labor (DOL) to implement regulations that determine which employees are exempted from overtime requirements. However, despite the well-publicized representations of the White House, any revisions of the regulations will require DOL to undergo a standard rulemaking process that will necessitate the promulgation of proposed regulations, publishing them and inviting comment from interested groups including business groups and organized labor. Given this rulemaking process, it is doubtful that new regulations tightening the qualifications of white collar employees will take effect any time in 2014. Further, any regulatory changes will only apply prospectively. Consequently, employers should have ample time to prepare for the expected changes in federal overtime eligibility regulations.

An update will be released once additional specifics on the initiative become available.