

LEGAL UPDATES

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## Service

Labor &amp; Employment

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## Changes to the FLSA Exemptions Are Coming Soon(er)

The Solicitor of the Department of Labor (DOL) has announced that the department expects to release final rules on overtime exemptions by July 2016, or as early as “late spring.” If adopted, the proposed changes would dramatically expand the number of white collar workers eligible for overtime compensation under the Fair Labor Standards Act (FLSA).

### Why the DOL Is Rushing to Release the Final Rules

Since September, the DOL has been reviewing the nearly 300,000 comments submitted by the public on the proposed changes to the white collar exemption rules. (Read our previous alert explaining the proposed changes.) In addition, the DOL is also considering revising the “duties” component of the white collar exemption. Currently, the “primary duty” for a white collar exemption is defined to mean “the principal, main, major or most important duty that the employee performs.” Some commentators speculate the final rules may revise the definition of an employee’s “primary duty” to mean the primary duty an employee performs 50 percent of the time, known as the “California Test.”

At least one commentator speculates that the DOL will try to release the final rules by May 16, 2016, to ensure they are reviewed by the current Congress.

The Congressional Review Act empowers Congress to review new federal regulations issued by government agencies and then either allow passage or vote to overrule them. If Congress takes no action to invalidate a regulation within 60 days, the rule goes into effect.

If the final rules on white collar exemptions are released after May 16, 2016, the next session of Congress will have the opportunity to decide whether to invalidate the regulations. Moreover, if the final rules are released after May 16, 2016, the next president could have the opportunity to veto them. As such,

the DOL is under pressure to release the final rules while President Obama and the current session of Congress are in power.

## **What This Means to You**

If the proposed regulations are adopted, employers may need to reclassify exempt employees as nonexempt. Employers will need to act quickly, because the Solicitor also stated that the DOL plans to make the final rules effective before the end of 2016.

Employers should begin identifying white collar employees whose earnings are close to the expected \$970 per week threshold (\$50,440 annually). Employers will have two choices: increase the employees' salaries so their earnings are above the threshold, or reclassify the employees as nonexempt. If reclassification is needed, the employer will need to make payroll adjustments to track the employees' hours worked and pay overtime wages when the employee works more than 40 hours within a workweek.

Because the final rules also may revise the definition of an employee's "primary duty," employers should examine the duties of employees who will meet the salary threshold to determine their "primary" duties and consider modifying job duties and job descriptions accordingly.

## **Contact Us**

For information on how proposed changes to the overtime exemption rules may impact your business, contact Husch Blackwell's Labor & Employment group.