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Labor and Employment Alert: President Proposes Changes to Overtime Regulations, Now What?

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On March 13, 2014, President Barack Obama signed a presidential memorandum directing the U.S. Department of Labor (DOL) to “propose revisions to modernize and streamline the existing overtime regulations” related to the overtime exemptions for executive, administrative and professional employees. The memorandum does not specify exactly what the new rules should include. However, the administration’s intent to narrow these overtime exemptions is apparent from President Obama’s statement that, “Because these regulations are outdated, millions of Americans lack the protections of overtime and ... the minimum wage.”

The Fair Labor Standards Act (FLSA) requires employers to pay nonexempt employees overtime pay at time and one-half their regular rate of pay for all hours worked over 40 in a workweek. Section 13(a)(1) of the FLSA provides an exemption from overtime pay for persons employed as bona fide executive, administrative and professional sales employees. These exemptions are referred to as the “white collar” exemptions. To qualify for these exemptions, employees must be paid at least \$455 per week on a salary basis, and their job duties must satisfy certain tests.

At a minimum, the new regulations are expected to propose a significant increase in the minimum salary threshold for the “white collar” exemptions. The current annual salary threshold is \$23,660 per year. In addition, it is possible that the DOL will revise the duties test for one or more of the “white collar” exemptions so that fewer employees will qualify for those exemptions. Based on recent comments from the Obama administration, it appears that the most likely target for a more restrictive duties test may be the executive exemption.

While President Obama is expected to push the DOL to move as quickly as possible to revise the overtime regulations, it is unlikely that any new regulations would go into effect before the end of 2014. Any DOL proposal would be subject to the normal rulemaking process. Under the Administrative Procedures Act, this rulemaking process requires the DOL to:

- Publish a Notice of Proposed Rulemaking;
- Draft and publish proposed rules;
- Provide a period for public comment;
- Consider revisions based on those comments;
- Wait for clearance of the rule by the Office of Management and Budget; and
- Then issue the final regulations.

The “white collar” regulations were last revised in 2004, when the Bush administration raised the minimum salary requirement from \$155 to \$455 per week and changed some of the requisite job duties. That process took about two years from start to finish. It is expected that the DOL will attempt to move more quickly this time. With no political opposition, the process usually takes about one year to complete. If there is Congressional political opposition, then the process can become much slower and much more politically difficult.