

# DOL Revises Rules on Who Is Exempt from Overtime Pay

By Jessica Summers

**Take-away:** Classifying employees as exempt under the FLSA may be getting more difficult and more expensive.

Can I classify this employee as exempt from the Fair Labor Standards Act (FLSA) overtime pay requirements? It's a question that most employers have grappled with at some point. In a March 13, 2014, Presidential Memorandum to the Secretary of Labor, President Obama took the first steps towards new regulation which could change an employer's answer to this question.

In his Memorandum, and the accompanying Fact Sheet published by the White House, the President emphasized the concern that, under the current regulations, lower level and lower paid employees can still be classified as exempt from overtime and are working long hours for little pay. The Memorandum instructs the Secretary of Labor to update and simplify the regulations. However, the Memorandum contains few specifics, so the full effect on employers and employees remains to be seen.

In light of what has been released by the Administration, one thing that the regulations can be almost guaranteed to change is the minimum amount which exempt employees must be paid. Under the current regulations, in order to qualify as exempt from the overtime requirements, most types of employees must be paid a minimum salary of \$455 per week (or slightly under \$24k per year). This is in addition to other statutory requirements to qualify for exempt status. In its Fact Sheet, the Administration emphasizes that this amount has not kept up with the rate of inflation, since it was originally set at \$250 in 1975, and that it is currently below the poverty line for a worker with a family of four. A minor to moderate increase to the exempt pay minimum may not significantly impact the many employers who already pay exempt employees well above the minimum rate. However, a large increase to the exempt pay minimum could force some employer to reassess and restructure their workforce to maintain their bottom line.

Another area of the regulations that the DOL appears likely to revise are the definitions of executive, professional and administrative employees. Here, we will likely see a narrowing of the types of duties that qualify an employee for these exemptions. Regardless of the exempt pay minimum, any changes to the definitions of executive, professional, and administrative employees will cause some employees who are presently properly classified as exempt to lose their exempt status.

Although the potential for change in an already challenging and sensitive area may seem daunting, employers can rest assured that they will have time to prepare for any changes ahead. The new regulations still need to be drafted and undergo the public notice and comment period before they can be finalized and implemented. Until more information is provided by the DOL, employers should keep an eye toward potential changes but continue to follow current regulations when classifying employees.