

# One Minute Memo®



## Obama Administration to Pursue Changes to FLSA Exemptions

Yesterday, President Obama signed a Presidential Memorandum directing the Secretary of Labor to begin the regulatory process to revise the Fair Labor Standards Act's white collar exemptions from minimum wage and overtime. Based on the President's remarks, any regulatory proposal will represent a fundamental change to the executive, administrative and professional exemptions. Although the President mentioned that there will be some efforts at clarification and simplification, it is clear from White House communications that the end goal for these regulatory revisions will be to provide overtime eligibility to "millions" of employees currently covered by an overtime exemption.

Although the details are still fuzzy, it appears that the Administration will seek to raise the salary level for the exemption to apply. A New York Times article references salary numbers as high as \$984 per week. In addition, statements about the regulatory activity indicate that the Administration plans to adjust the primary duty test, presumably to implement a hard 50% limitation on work deemed non-exempt, similar to California. It is likely that changes to the duties tests will also be proposed. In particular, the Administration may seek to change the requirements for the administrative exemption, where previous sub-regulatory efforts have thus far fallen flat.

A significant increase in the required salary and the elimination of the exemption for an employee who manages while contemporaneously performing other duties means that employers may no longer be able to claim an exemption for assistant managers and shift supervisors. In many cases, general managers may also become non-exempt unless their employer changes their job duties or provides a substantial raise. Yet another group of currently exempt employees that potentially will be impacted are those employees who have negotiated a reduced—but still in excess of \$455 per week—salary in exchange for a reduced workload or schedule. A raise in the salary level required will make such agreements far less available, and ultimately may force those employees to be paid by the hour (and, thus, to track their hours).

The precise parameters of what DOL intends to do, however, are still largely unknown. We will learn much more over the next few months, particularly when the regulation is actually proposed later this year. Once it is proposed, the public will have the opportunity to provide comments on the proposal, which the DOL will have to review and analyze prior to any revisions becoming effective, which likely will take place in 2015 or later.

Join us for a [webinar](#) on Tuesday, March 18, 2014 at 1:00 p.m. EDT as two of our senior attorneys, Alexander J. Passantino, former head of the Department of Labor's Wage and Hour Division; and Lawrence Lorber, former Deputy Assistant Secretary of Labor, discuss questions about what the President's directive means for your organization. [Click here](#) to register.

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