



The DOL's New Overtime Rules: Are They Now Up In The Air?

By: William Dunham

On May 18, 2016, the U.S. Department of Labor issued regulations that will make it more difficult for employers to classify their workers as exempt from federal overtime law. Under the new rules, employees making less than \$47,476 per year will no longer qualify for the commonly used "white-collar" overtime exemptions. This change is set to take effect December 1, 2016, at which time an estimated 4.2 million workers who are currently exempt could become eligible for overtime pay.

With this clock ticking, on September 20, 2016, officials from 21 states filed suit in federal court in Texas challenging the new regulations. Shortly thereafter, the U.S. Chamber of Commerce and a collection of other business groups filed their own suit, in the same court, raising a similar challenge. These lawsuits assert that the DOL exceeded its authority in adopting the new rules by increasing the exemption threshold too steeply, providing for automatic increases to the new threshold, and failing to account for regional variations in the cost of living. U.S. Labor Secretary Thomas Perez promised to vigorously defend the new rule.

Soon afterwards, a different group of opponents launched their own challenge to the new regulations. On September 28, 2016, the U.S. House of Representatives passed a bill seeking to delay implementation of the new rule by an additional six months. While seeming to acknowledge the need for updated overtime rules, House members backing the bill expressed concern that the new regulations were taking effect too soon, without giving employers sufficient time to adapt. President Obama has threatened to veto the House bill, pointing out that the new regulations were subject to thorough public comment and already provided employers with a six-month window to plan for the change.

While these challenges have a certain amount of bite, it is far from certain that they will succeed in delaying the new rules. Accordingly, we recommend that employers continue to prepare for implementation. Begin by analyzing your payroll to identify employees who may no longer qualify as exempt. To gauge the cost of overtime eligibility for those employees, calculate how many hours they work per week. For employees who will be working significant overtime, adjust their pay rates to keep compensation steady once overtime premiums are factored in. If you have questions along the way, Locke Lord's Labor & Employment Group is standing by to help.

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