



## **2.28.2015 UPDATE ON PROPOSED CHANGES TO: Fair Labor Standards Act (FLSA) Changes for White Collar Exemptions**

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***When can employers expect the change:*** The Department of Labor (DOL) expects to have the proposed regulations published by the end of February 2015; once the regulations are proposed in the Federal Register, businesses will have the opportunity to provide comments to the DOL. **At this time, it's unclear when employers will be required to comply with any proposed changes. McCloskey Partners will continue**

**to monitor this proposed change and update you.**

### GETTING TO KNOW THE PROPOSED CHANGES

President Obama issued a memorandum to DOL Secretary Thomas Perez in March 2014, directing him to "propose revisions to modernize and streamline the existing overtime regulations" of the FLSA. The memorandum referenced the "white-collar" exemptions, stating that they "have not kept up with our modern economy" and because of this, "millions of Americans lack the protections of overtime and even the right to minimum wage."

***Examples of White Collar Positions:* White Collar positions are often explained as non-routine or less structured positions. Employees in these type of positions may be administrative assistants, some office managers, support staff etc.**

The memorandum is meant to address an exemption from overtime pay provided by the FLSA for "white-collar" workers. These exemptions require specific tests including employees deemed as "exempt from overtime" cannot make less than \$455 per week." Additionally, the DOL requires employers to perform certain types of duties that are consistent with the exempt character of the position. (The changes will have less impact in states such as New York and California which already have higher salary basis for workers.)

The white-collar regulations have not been revised in over a decade. The DOL's regulations are planning to significantly increase the number of workers eligible for overtime pay by increasing the minimum salary requirements for workers to be classified as exempt and therefore not eligible for overtime. The proposed regulations will most likely make it difficult for the duties requirements to qualify as exempt under the FLSA's white-collar exemptions.

## WHATS NEXT

- Currently, employees are exempt from overtime pay if their salary is “not less than \$455 per week,” this weekly dollar amount is expected to increase significantly. The Obama Administration is looking to set the minimum salary requirement to \$42,000 or approximately \$807/weekly.
- There are proposed changes included as well to the Duties Requirement “test,” which will make it more difficult to satisfy the tests to qualify as exempt.
- The proposed changes include language that “suggest” that the DOL may require employees to spend a certain amount of time on exempt duties in order to qualify as exempt under the white-collar exemptions.

## HOW COMPANIES CAN PREPARE

Employers should be aware of the possible upcoming changes, specifically employers that will be most significantly impacted by an increase in the salary basis. There will be an opportunity for employers to provide comments to the DOL, and they should certainly consider doing so through a trade industry organization or individually.

## WHAT IS ON THE HORIZON ONCE REGULATIONS GO INTO EFFECT

- Employers should assess all positions to ensure that employees are classified correctly.
- Employers should review all of their job descriptions.
- Employee Handbooks should be reviewed to ensure that any language included Regarding, Fair Labor Standards Classifications, are in line with new regulations .
- Overtime policies should be reviewed.