



## Many Exempt Employees with Salaries \$30,000 to \$50,000 May Soon Be Entitled to Overtime

On March 13, 2014, President Obama signed a memorandum directing the United States Department of Labor to revise the regulations concerning employees' eligibility for overtime pay under the Fair Labor Standards Act ("FLSA"). Currently, employees with salaries of \$23,500 or more may be exempt from receiving 1.5 times their regular pay rate in overtime pay if their duties meet tests under the executive, administrative, and professional exemptions requiring managerial or supervisory responsibilities, advanced knowledge, or independent judgment. Although President Obama has not provided the specific nature of the changes to the exemptions he is seeking, it is likely that he will increase the salary pay requirement to a level between \$35,000 to \$50,000 per year.

The President's Memorandum describes the FLSA's executive, administrative, and professional exemptions as outdated, and states that "millions of Americans lack the protections of overtime and even the right to the minimum wage." During a press conference at the White House, President Obama said that "unfortunately, today, millions of Americans aren't getting the extra pay they deserve" because "an exception that was originally meant for high-paid, white-collar employees now covers workers earning as little as \$23,660 a year." An unnamed White House official was quoted expanding on the President's Memorandum by saying:

For example, a convenience store manager or a fast food shift supervisor or an office worker may be expected to work 50 or 60 hours a week or more, making barely enough to keep a family out of poverty, and not receive a dime of overtime pay. It's even possible that some of these workers make less than the minimum wage per year.<sup>1</sup>

Once the revisions are implemented, employees paid a salary under the threshold will become entitled to receive 1.5 times their regular pay rate for any hours they work over 40 in a week. For example, an employee making \$40,000 per year working 60 hours per week would receive nearly \$20,000 in additional overtime pay per year if paid time-and-one-half-overtime pay (if the salary or method of pay is not changed).

Though the revised regulations will likely not go into effect in 2014, as the DOL must draft the regulations and provide a period for public comments before final issuance, President Obama has also requested funding for 300 additional inspectors and directed the DOL to seek information from employers to support the revised regulation effort. Thus, employers are likely to see more Wage and Hour compliance audits by the DOL in coming months. Employers should review the duties and pay of their salaried positions and consider an attorney-client privileged audit of their exempt employees and pay practices.

We will continue to monitor this area of the law and any changes or updates that follow.

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<sup>1</sup> Reid J. Epstein, *Obama plans expansion of overtime eligibility*, March 12, 2013, POLITICO.com.

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