



The Department of Labor Takes a Stab at Resuscitating the Obama Era's Failed Overtime Rules

Most employers remember the chaos surrounding the Obama Administration's 2016 expansion of the Department of Labor's ("DOL") overtime rules under the Fair Labor Standards Act ("FLSA"). The stress, cost increases and administrative difficulties involved in reclassifying employees as exempt or nonexempt are hard to forget!

Under currently enforced law, employees with a salary below \$455 per week (or \$23,660 annually) must be paid overtime if they work more than 40 hours per week. This salary level was set in 2004. The goal of the Obama Administration's 2016 overtime rules was to make more than four million Americans eligible for overtime pay and to restore the protections intended by the FLSA. To achieve this goal, the Obama Administration increased the 2004 salary level threshold by more than double - to \$913 per week (or \$47,476 annually). Many employers were surprised by this expansion to the rule and frustrated by the increase in labor costs and administrative difficulties associated with implementing the new rule.

The 2016 rules were slated to become effective in December 2016. For better or for worse (probably for better for most employers), the rules were invalidated by a federal district court in Texas

shortly before they could go into effect. This left employers with the DOL's 2004 overtime rules and salary thresholds and questions as to what would happen to those rules under the Trump Administration.

On March 7, 2019, the DOL announced the Trump Administration's proposed overtime rules. The DOL announced its reconsideration of the 2016 salary levels, calling them "inappropriate" in light of the Texas district court's invalidation of the rule, public comments and feedback. The new rule increases the 2004 salary threshold, but not as drastically as the 2016 rule.

The DOL intends to increase the salary threshold to \$679 per week (or \$35,208 annually). The proposed rule also: (a) increases the salary threshold for highly compensated employees from \$100,000 per year under the 2004 rules, to \$147,417 per year; and (b) requires salary levels to be reassessed (but not necessary modified) every four years through the regular notice and comment rulemaking process.

Key Takeaways for Employers

- The DOL's 2004 overtime rules remain in full force and effect;

- The DOL's 2019 proposed modifications to the 2004 overtime rules have been published for public comment. The comment period closes on May 21, 2019.
- Although it is unclear whether the 2019 proposed overtime rules will be approved and become final as written, employer's should be prepared for the 2004 rules to change and for the salary thresholds for overtime and highly compensated employees to be increased to some extent.

If you have any questions about this Alert, or if you

would like assistance in updating your wage and hour policies, please contact the authors listed below or the Aronberg Goldgehn attorney with whom you work.

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