

DOL's Final Overtime Rule Sent to OMB Likely To Be Published Late Spring

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On Tuesday, the U.S. Department of Labor (DOL) sent its much anticipated final rule expanding overtime protections to millions of employees to the Office of Management and Budget (OMB) for review - the final step in the process before the rule becomes official in the next few months. The OMB typically takes 30 to 90 days to review the rule, with a possible effective date 30 to 60 days from the final publication date.

Previously, we reported that the Solicitor of Labor, Patricia Smith, announced that the final rule will not be published until late 2016. However, the DOL is pushing to finalize the rule earlier in 2016, perhaps to avoid Congressional review and rejection by a new President under the Congressional Review Act.

Employers should anticipate a short window of compliance from the date of final publication, perhaps as little as 30 days, and take steps now to prepare for and implement the rule's changes. Employers needing assistance with compliance or more information about overtime exemptions under the Fair Labor Standards Act should contact a member of our employment law group.

The DOL published its proposed rule amending the minimum salary requirement for overtime exemption under the FLSA on June 30, 2015. The proposed rule would expand overtime protections to cover some additional 5 million white collar employees. Under the proposed rule, the minimum weekly salary for overtime exemption would increase from \$455 per week (\$23,660 annually) to \$970 per week (\$50,440 annually). This salary threshold would be indexed to earnings, thus updating itself automatically.

Still unclear is the DOL's proposal for changes to the duties tests for the white collar exemptions. The DOL received nearly 300,000 comments during the comment period, and garnered criticism over the way the proposed rule posed questions and invited general commentary on the duties test without putting out a concrete set of proposed changes to the regulations for formal notice and comment.

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Jill Sebest Welch

Partner

Tel: (717) 399-1521

Email: jwelch@barley.com