

New White Collar Exemption Regulations Are Upon Us – Are You Prepared?

Article By:

Greenberg Traurig's International Trade & Investment Practice

On March 14, 2016, the U.S. Department of Labor (DOL) via its Wage and Hour Division forwarded its proposed modifications to the white collar exemptions of the Fair Labor Standards Act (FLSA) to the Congressional Office of Management and Budget (OMB). This is the final step before the new regulation is officially published, allowing Congress to begin reviewing it. OMB may take as many as 90 days to review the new regulation before it is published. After that, Congress will have 60 days to analyze it and hold hearings on the impact of the new regulation prior to its effective date.

The DOL had circulated a draft for public comment in July 2015. That draft prompted over 200,000 responses from various groups and individuals representing virtually all points of the political spectrum. It is likely that the stronger voices among the commentators will also make their opinion known to their representatives when the regulation is published.

The key feature of the new white collar regulation was the rise in the salary basis test applicable to many administrative, executive and professional exempt employees. Under the existing regulations, administrative, executive and professional exempt employee must meet both a salary basis test (be paid at least the minimum salary amount provided in the regulations, last amended in 2004) and a duties test (which requires that the primary duty of the exempt employee meet the elements of the applicable exemption). The proposed regulation suggested increasing the minimum qualifying salary amount from \$455 a week to \$970 (or from \$23,660 annually to \$50,440). The regulation also left open a possibility of adding a quantitative component to the duties test, which would suggest that the primary duty of the exempt employee should also occupy the majority of that employee's time (i.e. 50%). The current regulations do not require a quantitative analysis, only a qualitative analysis of what is the primary duty of the exempt employee.

With this new regulation taking effect potentially only 4 months from now, employers should take steps to address questions that are sure to arise regarding the eligibility, or lack thereof, of individuals who may not meet the new salary basis test.

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