

Department of Labor Takes Position on Enjoined FLSA White Collar Exemption Regulations, But Questions Remain

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As previously [reported](#), on November 22, 2016, the United States Department of Labor (“DOL”) was enjoined nationwide from implementing regulations that would have more than doubled the minimum salary requirement for the overtime pay exemptions under the Fair Labor Standard Act’s executive, administrative and professional exemptions, also known as the “white collar” exemptions. The injunction is now on appeal before the United States Court of Appeals for the Fifth Circuit.

Recently, the Department of Labor filed its reply brief on appeal, which raises new questions about the amount and timing of potential increases in the minimum salary threshold.

To recap, the enjoined amendments to the white collar overtime exemptions included the following key features:

- Increasing the minimum salary to meet the white collar exemption from \$455 per week (approximately \$23,660 annually) to \$913 per week (\$47,476 annually).
- Increasing the total annual compensation for highly compensated employees from \$100,000 to \$134,004.
- Installing procedures that would update these salary thresholds every three years starting January 1, 2020.

The District Court’s ruling not only enjoined the proposed salary threshold increases, but also called into question whether the Department of Labor has the authority to set any minimum salary thresholds in the first place.

In its Reply Brief to the Fifth Circuit, the DOL stated that it has “decided not to advocate for the specific salary level” set by the prior administration’s rule, but argued that it is empowered to set minimum salary thresholds for the white collar overtime exemptions. The DOL further stated that a new rulemaking process will not begin unless and until the Fifth Circuit confirms the DOL’s authority to set a minimum salary threshold for the white collar overtime exemptions.

Meanwhile, the DOL has submitted a Request for Information regarding the overtime rules for review

by the Office of Information and Regulatory Affairs, to seek “public input on several questions that will aid in the development of” a future proposed rulemaking. It remains unclear at this time whether the minimum salary threshold will increase, by what amount, and when.

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