

New Overtime Rule Soon to Make Its Appearance

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The DOL's new overtime rule, intended to replace the rule announced late in the Obama administration but subsequently declared invalid by a federal court, finally has made, or soon will make its way, to the Office of Information and Regulatory Affairs (OIRA), a division of the Office of Management and Budget (OMB), Bloomberg Law has reported. OIRA is responsible for reviewing significant regulations before publication to ensure agency compliance with the principles in Executive Order 12866, which include incorporating public comment, considering alternatives to the rulemaking, and analyzing both costs and benefits. OIRA can take up to 90 days to review a regulation, which can be extended, and there is no minimum period of review required. Last fall, the DOL's Wage and Hour Division announced that a new notice of proposed rulemaking is scheduled to be released by March 2019. How, if at all, the continuing government shutdown will affect this schedule is unknown.

In May 2016, the DOL issued its long-awaited overtime rule and, in doing so, more than doubled the required salary for the "white collar" exemptions (those individuals employed in an executive, administrative, or professional capacity) from \$23,660 to \$47,476. That rule also raised the required salary level for the "highly compensated" exemption, from \$100,000 to \$134,004, and established rules for automatic increases to those levels every three years. The rule was set to take effect on December 1, 2016 but days before it was to become effective, a federal district court in Texas enjoined the rule nationwide and subsequently held that the rule was invalid. The DOL initially appealed these decisions but eventually withdrew its appeals, asserting early in the Trump administration that it intended instead to issue a revised rule. Based on previous comments from Secretary of Labor Alexander Acosta, the new proposed minimum salary level for the white collar exemptions is

expected to be in the low \$30,000 range – significantly lower than the minimum salary set forth in the now-defunct Obama-era rule.

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