

## ***Department of Labor May Soon Release New Proposed Regulations Regarding FLSA Exemptions***

Recently, the Department of Labor (DOL) signaled it may soon release long-anticipated changes to the regulations that implement the Fair Labor Standards Act's "white collar" overtime exemptions. These changes may have a significant impact on all employers, including school districts, and therefore, employers should be prepared for such changes, which may occur within the next several months.

On January 16, 2019, the DOL submitted a draft of its proposed changes to the regulations that implement the white collar overtime exemptions to the Office of Management and Budget (OMB) for review. OMB review is traditionally the last stop before a new proposed regulation is published. This long-awaited regulation change will likely make more executive, administrative, professional, and computer employees eligible for overtime compensation by raising the minimum salary at which employees in these positions would be exempt from overtime pay.

Employees who qualify under one of the white collar exemption categories are exempt from overtime pay. To qualify for an exemption, an employee must meet certain requirements related to salary threshold, salary basis, and primary duties. Currently, white collar exemptions generally require a salary threshold of \$23,660. Employees who do not meet the salary threshold requirement generally must be paid overtime. However, there are exceptions, such as teachers, who generally can qualify for an exemption without meeting a salary threshold.

The DOL first proposed amending the regulations that implement the white collar exemptions in 2016 during the Obama Administration. The Obama-era regulations aimed to raise the salary threshold to \$47,476, a move that would have significantly increased the number of white collar employees who would be eligible for overtime pay. After the release of the Obama-era regulations in May of 2016, however, a group of 21 states filed a lawsuit over the proposal in a federal Texas court. The federal court temporarily enjoined the Obama-era regulations, blocking their implementation for the remainder of the Obama administration. Once President Trump took office, the Trump DOL dropped its defense of the Obama DOL proposal in federal court. However, the Trump DOL also expressed its intention to reexamine changes to the white collar exemptions and likely raise the salary threshold through the regulatory process.

The details of the Trump DOL's proposed regulations are still unknown, but some commentators believe the salary threshold may be raised to at least \$30,000. According to the Office of Information and Regulatory Affairs, the proposed regulations are still pending review by the OMB. Although there is no deadline for

when the OMB is required to finish its review, the OMB typically completes its assessment within 90 days.

Therefore, it is likely that OMB will finish its review sometime in March / April 2019. Once the OMB finishes its review, the DOL will publish the proposed regulations for public comment. During this period, which typically lasts between 60 and 90 days, the public has an opportunity to provide input on the proposed regulations. After this opportunity, the DOL will likely publish the final regulations, which will include the effective date for the new regulations. The final regulations may be different than the proposed regulations.

School districts should be aware of these potential changes and begin to identify whether certain positions or practices may need to be reviewed in light of these potential changes. School districts seeking to review their overtime policies in anticipation of the DOL's proposed changes to the regulations that implement the white collar exemptions should consult with legal counsel to ensure continued compliance with all state and federal wage and hour laws.

---

---

## PRIMARY AUTHOR



### ***Brenna R. McLaughlin***

(608) 286-7206

BMCLAUGHLIN@BOARDMANCLARK.COM

- |                    |                |                      |                |                           |                |
|--------------------|----------------|----------------------|----------------|---------------------------|----------------|
| ■ Michael J. Julka | (608) 286-7238 | ■ Eileen A. Brownlee | (608) 822-3251 | ■ Steven C. Zach          | (608) 283-1736 |
| ■ James K. Ruhly   | (608) 283-1738 | ■ Douglas E. Witte   | (608) 283-7529 | ■ M. Tess O'Brien-Heinzen | (608) 283-1798 |
| ■ JoAnn M. Hart    | (608) 286-7162 | ■ Richard Versteegen | (608) 283-7233 | ■ Brian P. Goodman        | (608) 283-1722 |

*Disclaimer: Boardman & Clark LLP provides this material as information about legal issues. It does not offer legal advice with respect to particular situations and does not purport that this newsletter is a complete treatment of the legal issues surrounding any topic. Because your situation may differ from those described in this Newsletter, you should not rely solely on this information in making legal decisions. In addition, this material may quickly become outdated. Anyone referencing this material must update the information presented to ensure accuracy. The use of the materials does not establish an attorney-client relationship, and Boardman & Clark LLP recommends the use of legal counsel on specific matters.*