

# In the Latest Episode of The Overtime Rule Soap Opera: DOL Tells Fifth Circuit It Will Revise Obama-Era Overtime Rule – But Not Just Yet

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Last week, lawyers for the federal government told an appeals court that the Department of Labor plans to revise the currently-blocked overtime rule issued during the Obama administration last year. But it won't do so, it said, until the Fifth Circuit Court of Appeals confirms that it has the right to set that threshold.

We previously explained the impact of the Obama-era DOL's "Overtime Rule" [here](#) and updated you [here](#) about a series of court decisions that have blocked the rule from taking effect. The rule as currently written would essentially double the salary threshold to \$913 per week (approximately \$47,000 per year) before an employee could qualify for a "white collar" exemption from the FLSA's overtime requirements. The pending rule was expected to make some 4 million workers newly eligible for overtime pay.

It was highly anticipated by many in the employment and labor community that the new Trump-era DOL would scrap the rule altogether. But lawyers requested that the court decline to address the validity of the specific \$913 weekly salary threshold set by the rule, because the "DOL intends to revisit [it] through new rulemaking." The DOL confirmed however, that it would delay any such rulemaking until the court of appeals decides whether the DOL has the authority to establish a salary threshold.

This development coincides with recent testimony by Labor Secretary Alexander Acosta during his confirmation hearing that he might support raising the salary threshold a modest amount to account for inflation.

### What This Means

If the Fifth Circuit confirms the DOL's threshold-setting authority *and* lifts the injunction against the rule, the rule as it is currently written – including the \$913 weekly salary threshold – would likely become effective until the DOL were to revise it. In that case, it is not clear whether the rule would be retroactive back to last year's effective date, and if so, whether DOL would enforce it retroactively. The DOL could issue sub-regulatory guidance to provide more clarity on these points, but there is no certainty that DOL will do so. If the Fifth Circuit does affirm and continues to enjoin the rule from taking effect, it would allow the DOL to more seamlessly execute on an updated threshold without leaving employers scrambling.

If the Fifth Circuit affirms the lower court ruling and continues to enjoin the rule, the rule's future is even more uncertain, as the DOL will not have clear authority to set a threshold at all or engage in new rulemaking. The DOL could appeal to the Supreme Court, drawing the battle and the uncertainty out for almost another year.

In other words, what this means for employers is that it could be a hard day's night before they get any peace of mind about the overtime requirements with which they'll be expected to comply on a going-forward basis. We'll be back in touch when the next episode in this continuing soap opera airs.

## Authors