

Proposed Overtime Rule Pushed to August 2023

The U.S. Department of Labor (DOL) has recently [revealed](#) it will issue a proposed overtime rule in August 2023, according to the most recent regulatory agenda. This is the third time the agency has delayed publishing the proposed overtime rule. The DOL originally planned to publish the proposed rule in April 2022 but delayed it until October 2022. The agency then announced at the start of the year that it would issue the proposed rule in May 2023. Even though the proposed rule is set to be published in August, it could be delayed again based on the DOL's previous postponements.

The DOL's most recent delay could be due to Congress considering nominations to fill the current vacancy for the U.S. secretary of labor or because the agency may be considering more aggressive changes to the existing rule than previous revisions. However, this delay means employers must wait until August to see how the proposed changes to the rule might impact them in 2023 and beyond. Changes to minimum wage and overtime requirements under the Fair Labor Standards Act (FLSA) could impact operational and compliance costs and increase litigation risks for employers.

The DOL has also separately [indicated](#) that it has delayed publishing a final independent contractor rule until October 2023, according to court documents. The rule was originally scheduled to be published in May 2023.

What Will the Proposed Overtime Rule Address?

The agency has not yet specified the changes it's

considering making to the rule; however, the proposed overtime rule is expected to address how to implement the exemption of executive, administrative and professional employees from the FLSA's minimum wage and overtime requirements, according to the agency's regulatory agenda. The proposed overtime rule could provide clarity for classifying exempt employees and increasing their salary levels under the FLSA. Some experts believe the DOL may create automatic annual or periodic increases to exempt employees' salary levels by linking them to the consumer price index, allowing exempt employees' salary thresholds to adjust without formal rule-making.

What's Next?

Once the DOL publishes a proposed rule in the Federal Register, there will be time designated for the public to comment. The agency will then review the comments and determine whether to move forward with a final rule. Some experts believe the DOL will move quickly once the proposed rule is published in the Federal Register. However, the proposed overtime rule will likely be challenged legally once finalized.

Employers are not obligated to change how they classify or pay employees until the DOL's proposed rule becomes final. Potentially impacted employers will want to follow the DOL's rule-making process closely.

Employers should stay tuned for updates from OneDigital but otherwise operate as usual. We will keep you apprised of any notable changes.