



# FLSA Exemption Changes: Do The Election Results Mean, "Never Mind"?

Insights

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Many employers are wondering whether Donald Trump's election means that they may now forget about the coming changes in the federal Fair Labor Standards Act's "white collar" definitions.

The answer is clear: The election results do *not* suspend or reverse those changes.

## The Countdown Continues

By their own terms, the new regulations are scheduled to take effect automatically on December 1, 2016. Mr. Trump does not become President Trump until January 20, 2017. The increased salary-threshold of \$913 a week (and other revisions) will have been in place for about 50 days at that point.

Until the incoming administration takes office, the state-of-play remains largely the same as we have discussed in earlier posts (see [here](#) and [here](#)).

## Future Changes?

Whether the regulatory revisions will be cut-back or eliminated in some way in the future is in the realm of speculation at this point.

Of course, one possibility is that, given the multitude of matters that will be competing for his attention, then-President Trump will take *no* action. It is also conceivable that, as a matter of policy, he will be disinclined to uproot the new regulations.

It is unlikely that President Trump will be in a position simply to reverse the changes immediately upon his inauguration. Moreover, any move to do so will probably result in litigation and yet-more uncertainty.

Perhaps President Trump will direct the U.S. Labor Department to commence a new rulemaking process, subject to notice and comment, with the goals of undoing the earlier revisions, setting lower thresholds for the salary requirement and for the "highly compensated" version of the exemptions, eliminating the three-year "update", and so on. How long and what form this process would take, and what could or would be done in the meantime, are currently unpredictable.

Maybe President Trump would direct USDOL to adopt a non-enforcement policy with respect to the increased thresholds, pending further action. But even if he does, this would not shield employers

increased thresholds, pending further action. But even if he does, this would not shield employers from private FLSA lawsuits based upon then-in-effect regulations.

Possibly Congress will pass remedial legislation that President Trump will then sign. Again, though, no one can know at present whether or when this might occur, or what any such legislation might say.

### **The Bottom Line**

Tuesday's election results have not derailed the exemption changes.

For now, management acts at its peril in assuming that the revised regulations will not go into effect on December 1.

### ***Related People***

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