

OT rule might be released in spring ... or summer ... or maybe spring, DOL says

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The DOL keeps changing its tune on when it'll release the final revisions to the overtime exemption rules.

The agency's final rule will be kind of **a big deal**. So employers really want an accurate timeline on when the rule will be released — so they can plan accordingly.

Problem is, the DOL itself doesn't appear to have a specific timeline mapped out within its own walls for when the rule will be released.

Here's what we know:

- Last fall, at the American Bar Association's Labor and Employment Law conference in Philadelphia, the DOL's Solicitor of Labor M. Patricia Smith said during a panel discussion that the finalized changes to the FLSA's overtime eligibility rules likely won't be issued **until late 2016**.
- Shortly after, the DOL released its fall **2015 regulatory agenda**, which said the agency was targeting a July 2016 release date for the final rule. The deadline wasn't set in stone, but it gave employers an idea of when they should be ready for the new regulation.
- Then DOL Secretary Thomas Perez told *Bloomberg BNA* in an interview that the agency is "confident we'll get a final rule out by spring 2016." Not long after Perez's statements went public, the Congressional Research Service, a branch of the Library of Congress, **released a report** that suggested the DOL had until approximately May 16 to release the rule to avoid giving the next Congress and president the power to overturn the rule. The report detailed a little-known mechanism created by the Congressional Review Act that gives Congress 60 legislative session days to pass a joint resolution that would invalidate any major rule. If the rule is submitted to Congress with fewer than 60 session days remaining on the legislative calendar, then the next Congress will have a similar 60-day period to consider the rule. Following the release of the report, Perez's statements made perfect sense, until ...

- ... Smith, while speaking at another meeting of the American Bar Association, said the DOL's white collar exemption rule would be published in July 2016 (a tip of the hat to law firm Ford & Harrison for [bringing her comments to our attention](#)). Smith also stated that the rule will become effective 60 days after it's published.
- Then, roughly a week later, [Smith backtracked](#) ... a bit ... by saying the final rule could be published *in or before* July. She also said the rule will take effect *at least* 60 days after it's published.

What should employers do?

What is all of this telling employers? This is a complicated law, and the DOL appears to be poring over the details carefully. It doesn't want to promise a release date it can't meet.

And reading the tea leaves, it appears, to the agency's credit, that the DOL's putting an emphasis on getting the rule just right rather than wrapping it up before it's subject to the Congressional Review Act.

Of course, that doesn't mean you can count out the rule being published prior May 16.

So what should employers do? The safest thing is to keep planning for a spring release and to have to be in full compliance by summer. That's the only way to ensure you're not behind the eight ball when the rule is published.

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