

### 3rd Delay: Trump's DOL to Address Overtime Rule by June 30

A federal court of appeals has granted the U.S. Department of Labor (DOL) its third extension in defending a lawsuit challenging new Fair Labor Standards Act (FLSA) [overtime regulations](#).



A lower court temporarily enjoined the rule last year and the Obama administration appealed that order. Now, the Trump administration must decide whether to continue with that defense.

Citing lack of leadership—specifically, a secretary of labor—the DOL has now requested and received three delays, giving it until June 30 to make a decision.

### Background

The rule, which was scheduled to take effect December 1, 2016, would have required employers to pay overtime to employees earning less than \$913 per week (which amounts to \$47,476 annually). The change would have more than doubled the existing threshold.

States and business groups challenged the rule in court and a federal district court judge granted a preliminary injunction, temporarily halting the rules just days before their effective date.

President Obama's DOL appealed the order to the 5th U.S. Circuit Court of Appeals. Shortly after President Trump's inauguration, his administration obtained a 30-day extension for its reply brief. It then received a second, 60-day extension, putting the new deadline at May 1.

In an unopposed motion filed April 14, the DOL requested another 60 days. "The due date was previously extended to allow incoming leadership personnel adequate time to consider the issues. The nominee to be Secretary of Labor has not yet been confirmed. Thus, the federal government respectfully requests an additional 60-day extension," it said.

The court granted the request April 19.



## Fate of the Rule

Trump's nominee for secretary of labor, Alexander Acosta, called into question the legitimacy of *any* overtime salary threshold during his Senate confirmation hearing.

Acosta dodged questions about what an appropriate salary level might be and instead volunteered concerns about the threshold altogether. "I think the authority of the secretary to address this is a separate issue from what the correct amount is and the litigation needs to be considered carefully both with respect to what would be the appropriate amount if the rule were to be changed or revised but also what is within the authority of the secretary to do," he told lawmakers last month.

A former DOL economist who worked under Obama called his assertion "breathtakingly radical" because a threshold has been in place since 1938. For full coverage of the hearing, see ['Breathtakingly Radical': DOL Nominee Questions Legality of Any Overtime Salary Threshold](#).

The Senate Committee on Health, Education, Labor, and Pensions approved Acosta and he is now awaiting a vote by the full Senate.

In the meantime, the lower court judge who issued the injunction still could issue a permanent injunction or rule on a pending summary judgment motion. Obama's DOL asked that judge to halt all proceedings while the 5th Circuit reviews the injunction [but he declined](#), saying that the department has not shown that it is likely to succeed with its argument that the court erred in issuing the injunction.

And, in case Trump's DOL drops its defense of the lawsuit, a group of labor organizations has asked to take over. "With the recent presidential election, and particularly as more information becomes available regarding the incoming Administration's plans, policy, and appointments, the Texas AFL-CIO has grave concerns as to whether its interests in the Final Rule will be represented by the DOL," it told the court. The district court has not issued an order on the organization's motion.