



Keep Calm And Carry On: Part 2

Insights

9.27.16

The December 1 effective date for the increased dollar-amount thresholds for most of the federal Fair Labor Standards Act's so-called "white collar" exemptions is now only a little more than two months away.

In addition to proposals about which we posted earlier, renewed hopes that these changes will be stopped or delayed are being sustained by other, more-recent developments.

The Lawsuits

These include the lawsuits filed by 21 state governments and by a number of employer- and business-advocacy groups. It is important to keep in mind that:

- The legal theories underlying these challenges are complex, some of them are untested in significant ways, and some of them might present an uphill battle;
- The prospects for success in either case are uncertain;
- The states' complaint is predicated in several ways upon legal or factual matters that are specific to government employers, such as whether the changes violate state sovereignty under the U.S. Constitution's Tenth Amendment;
- Employers should not assume that the court will take action in either case by December 1; and
- An employer-favorable result in either lawsuit is virtually certain to be appealed and might be reversed.

A Legislative Stay?

A bill has been introduced in the House of Representatives to delay (rather than to negate or revise) the coming regulations. H.R. 6094 would postpone the effective date to June 1, 2017. Reports are that the House will vote on this measure within a matter of days.

Even if the bill passes in the House:

- It must still make its way through the Senate;
- President Obama would almost-certainly veto the legislation; and
- It seems unlikely that his veto would be overridden.

The Bottom Line

Even some employers that have been planning for the changes for a while now are feeling time-pressure as the deadline nears.

Perhaps in the end there will be a reprieve of some kind. But with only about 60 days to go, we continue to urge employers to move forward with their final preparations.