



UPDATE: When Will The Exemption Changes Occur?

Insights

11.16.15

Since our recent [post](#) on this topic, U.S. Solicitor of Labor M. Patricia Smith has appeared at the annual conference of the American Bar Association's Labor & Employment Law Section. Some of her remarks indicate that the U.S. Labor Department's final, revised regulations defining the Fair Labor Standards Act's Section 13(a)(1) exemptions might be forthcoming much later than many had thought.

Release After The 2016 Elections?

Solicitor Smith suggested that the publication is not "likely" before "late 2016". There is even speculation that she could be referring to a point after the November elections.

It is worth recalling that Solicitor Smith's comments last year about the release of *proposed* revisions suggested a timeframe that turned out to be off by a number of months.

Moreover, the U.S. Labor Department consists of separate agencies; the Office of the Solicitor is just one of them. Another is USDOL's Wage and Hour Division, the Administrator of which has the principal responsibility for analyzing comments and for formulating final regulations and related explanations. These two offices are no doubt in close contact about the proposals, but one should not assume that Solicitor Smith will have particular sway as to timing.

Furthermore, whether and to what extent the revisions' publication will be affected by political calculations are important questions but are also difficult to assess. If electoral politics are to guide what happens, then no principled timing evaluation can be made. Among other things, whatever is the case at the moment might be different 30 days from now.

And The Post-Publication Effective Date?

In 2004, the final exemption changes took effect 120 days after publication. Solicitor Smith has indicated that, by contrast, this time employers will have only 60 days to implement a compliance plan.

There has been some suggestion that a later-than-previously-anticipated publication date will offset the impact of a shortened "grace period". However, it does not seem to us that an employer's having a longer period to ponder the many uncertainties presented by USDOL's proposals is a meaningful substitute for adequate time to study and formulate actions in response to the *actual, final* regulations.

The Bottom Line

Notwithstanding Solicitor Smith's comments and the conjecture they have provoked, we are unconvinced that the changes will be delayed until late 2016. If this in fact comes to pass, so much the better, but employers should not bank on it.

As we said before, employers should not allow themselves to be distracted or lulled into inaction by these speculations. Management should continue with the necessary analysis and planning so as to be prepared to move no matter *when* it must eventually take action.