



Exemption Comments Already Being Filed

Insights

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Nearly 1,600 comments have already been posted in response to the U.S. Labor Department's proposals regarding the federal Fair Labor Standards Act's Section 13(a)(1) exemptions. Not surprisingly, there is great concern about the magnitude of the salary increase USDOL has proposed, both the \$921 level that is actually on the table and the \$970 figure that USDOL has projected might be in the final regulations.

Many of the postings consist of brief expressions of opposition or support that contain little or nothing in the way of analysis. Others provide somewhat more in the way of arguments and rationales but typically still stop short of an in-depth presentation. Some appear to be based upon templates or forms.

A significant portion consists of requests that the comment period be extended by 60 days, that is, into early November. There might be an extension of some length, but employers certainly should not *assume* that there will be an extension, or that any additional period will be as long as 60 days. Keep in mind that there is also pressure from the other direction: A few weeks ago, 144 Senators and House members exhorted President Obama to "move without delay to a final rule", and the Economic Policy Institute has submitted a spreadsheet containing over 9,600 supposedly "individual public comments" under cover of a letter asking USDOL to "act immediately to raise the overtime threshold" (a link to the Congressional letter appears below).

Submit Substantive Comments

In order for comments to have the most potential impact, they should be substantive, thoughtful, detailed, thorough, tailored, and comprehensive as to the matters addressed. Illustrations, anecdotes, and expressions of general concern are of course relevant, but they are unlikely to carry the load standing alone.

It can also be worthwhile to take relevant current events into account. For example, after USDOL's proposals were sent to the White House's Office of Information and Regulatory Affairs, but before they were published, OIRA reportedly was meeting with numerous groups about them. Knowing the identities of these groups might be a pertinent item to consider in evaluating and commenting on the proposal, so we submitted a Freedom of Information Act request in this regard. (We have received no response other than an e-mailed acknowledgement of our request more than 50 days ago, so it is unclear whether or when the information might be available.)

The Bottom Line

Early indications are that the volume of comments might rival the more than 75,000 tendered in connection with the 2004 modifications.

Comments adequate to the task take time to prepare. Those who plan to do so but have not yet started should begin drafting them without further delay.

[Congressional Democrats' Letter.pdf](#) (4.32 mb)