



FLSA Exemption Revisions Sent To OMB (Updated 05 08 15: Proposals To Be Out By June 18)

Insights

5.06.15

U.S. Secretary of Labor Tom Perez has announced that proposed new definitions for the federal Fair Labor Standards Act's Section 13(a)(1) executive, administrative, professional, outside-sales, and derivative exemptions have been submitted to the federal Office of Management and Budget to seek its approval for their release for public comment.

Secretary Perez offered no details about the contents of the proposals. However, he did remark that the existing rules have somehow "eroded over the years" in unspecified ways. He said that President Obama directed USDOL to take action to ensure that millions of employees "are paid fairly for a long, hard day's work" and receive overtime pay "for the extra hours they spend on the job and away from their families."

Is USDOL Making Legislative Policy?

Of course, Secretary Perez's statements about the aims of USDOL's undertaking are representative of much commentary over the last several months by those who openly or implicitly advocate stringently narrowing these exemptions. But as we have said, USDOL's *sole* authority and *only* responsibility under Section 13(a)(1) is to establish dispassionate definitions that facilitate meaningful distinctions between who is and is not properly treated as exempt *within the parameters of the words in the FLSA itself and related Congressional intent*.

Whether the impact of the FLSA's Section 13(a)(1) exemptions is or is not that "millions of workers" are paid "fairly" for "extra hours" is a question that only Congress can resolve. This is not President Obama's or Secretary Perez's decision to make, either explicitly or via rules that are crafted in the interests of reaching a fundamentally-policymaking result.

Timeline Still Uncertain

While there has so far been no announcement of how long OMB's evaluation will actually take, the agency is normally expected to complete its assessment within 90 days. Some suggest that there might already have been informal communications between these agencies that will hasten the review.

If OMB approves the submission, then presumably USDOL will release it for public comment with little delay. This comment period is unlikely be shorter than 60 days, and it might be longer (the period was about 90 days in 2003, the last time revisions were proposed).

The Bottom Line

It is important to note that *no exemption changes have been made*. This is simply the next step in the process of considering *proposed* revisions.

Whatever new definitions are finally adopted might face challenges in court or in Congress. Perhaps Secretary Perez's revelation about USDOL's purposes will figure prominently in any such proceedings.

UPDATED 05 08 15: Speaking at the Washington, D.C. Labor & Employment Law Council meeting of the Associated General Contractors, U.S. Labor Solicitor M. Patricia Smith has said that the proposed regulations will be published no later than June 18, 2015.