



Interesting Comments From U.S. Labor Solicitor Smith

Insights

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Solicitor of Labor M. Patricia Smith spoke at a December continuing-legal-education conference in Atlanta. Her remarks in a couple of areas were especially interesting.

Coming "White Collar" Exemption Revisions

As we have [reported](#), the U.S. Labor Department plans to revise its regulations governing the federal Fair Labor Standard Act's Section 13(a)(1) executive, administrative, professional, and "outside salesman" exemptions (and other, derivative categories included at 29 C.F.R. [Part 541](#)). According to Ms. Smith, USDOL still intends to release its proposals in February 2015.

She declined to provide any preview of the possible changes. However, Ms. Smith said she is "hopeful" that the revisions would be "less controversial" than when the regulations were last modified in 2004. Given that whether the coming modifications are or are not controversial will rest to a great extent in the eye of the beholder, perhaps it is unsurprising that she did not further elaborate upon this point.

It seems likely that the proposals will be highly controversial. We continue to recommend that employers be on the alert for USDOL's Notice of Proposed Rulemaking, and that they be prepared to respond quickly once the prospective revisions are actually published.

Opinion-Letter Practice Unlikely To Resume

Readers will recall that, in March 2010, USDOL discontinued its over-70-year practice of issuing opinion letters in response to specific questions about the FLSA from the public, including from employers, employees, and attorneys.

During a conversation at the Atlanta conference, Solicitor Smith expressed skepticism that USDOL will reinstate this program. Citing a lack of resources, she said that USDOL would instead continue its more-recent approach, which has been to issue generalized "guidance" or "interpretations" on a limited number of broader topics of interest to USDOL.

As we [said](#) in 2010, we believe that particularized USDOL opinion letters serve important educational and compliance-promoting purposes having a much-greater impact than officials appear to think, and that a cost/benefit analysis easily favors USDOL's investment of resources in these efforts. Nevertheless, Ms. Smith's comment appears to signal that this will not be done under the current

administration.

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