



FLSA Insurance-Adjuster Overtime Exception Buried In Appropriations Bill

Insights

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Section 111 of the recently-enacted "Department of Labor Appropriations Act, 2015" directs that the federal Fair Labor Standards Act "shall be applied as if" there is an overtime exclusion (link to reproduction below) for certain workers who are employed to adjust or evaluate claims resulting from or relating to a major disaster. A major disaster is defined as being "any disaster or catastrophe declared or designated by any State or Federal agency or department."

Significant Limitations

The exception applies only for a two-year period following the major disaster. Among other requirements and limitations are that:

- The employee's employer may not be "engaged, directly or through an affiliate," in underwriting, selling, or marketing property, casualty, or liability insurance;
- The employer must maintain whatever worker's-compensation "insurance coverage or protection" that is "required by applicable law" and must withhold the necessary taxes from the employee's "wages, salaries and any benefits";
- The employee must receive "on average" minimum "weekly compensation" of either \$591 per week or any higher amount USDOL sets;
- The employee must have the necessary licenses to do the work, and his or her duties must include "any" of a variety of adjuster-related activities described in the section.

Try, Try Again . . .

The exception is similar to (but is also appreciably different from) one unsuccessfully proposed in 2012 as H.R. 6346, about which we wrote at the time. This bill was introduced by Representative Denny Rehberg (R-MT)(who is no longer in the House) and co-sponsored by Representatives Jo Bonner (R-AL)(also no longer in the House) and Alcee Hastings (D-FL). It is not clear at the moment who was the moving force behind including Section 111.

One noteworthy difference is that the 2012 bill would have supplanted state and local overtime requirements with respect to employees who otherwise qualified for that version. Section 111 includes no such provision.

The Bottom Line

Given the narrowness both of the exception and of the circumstances under which it will apply, the provision seems certain to have no broad-scale effect.

All the ramifications of the "shall be applied as if" language are less obvious. However, Section 111 apparently does not *actually* amend the FLSA, such that (i) this could explain the absence of any effort to pre-empt state and local law; (ii) the exception might well not survive the next USDOL appropriation; and (iii) it will be interesting to see how the courts react to the exception in any FLSA lawsuits to which it is relevant.

[Adjuster Exception, USDOL Appropriations Act 2015.pdf \(22.07 kb\)](#)