



November Target For Proposed Exemption Changes (Updated 11 25 14: Target Is Now February 2015)

Insights

6.03.14

As we reported previously, in March President Obama directed the U.S. Labor Department to "modernize and streamline" its regulations governing the federal Fair Labor Standards Act's Section 13(a)(1) executive, administrative, professional, and "outside salesman" exemptions. Among other things, he has instructed USDOL to "consider how the regulations could be revised to update existing protections consistent with the intent of the Act . . ."

Probable Aim: Significant Curtailment

All indications are that the goal of this initiative is to limit these exemptions even further so as to cause far-fewer employees to fall within them. It is therefore highly likely that the forthcoming proposals will:

- Include a substantial increase in the minimum salary amount, possibly more than doubling it from \$455 per week to perhaps something in the neighborhood of \$1,000 per week; and
- Undertake to change the duties-related requirements for exempt status in ways designed to make them harder to satisfy.

USDOL's most-recent regulatory agenda indicates that the agency expects to publish a Notice of Proposed Rulemaking in November 2014. This document will contain the actual regulations USDOL seeks to adopt, along with related explanations and rationales.

The Bottom Line

When this NPRM is released, employers should *immediately* evaluate the proposals in detail and should submit *substantive* written comments to make USDOL aware of management's concerns, recommendations, and criticisms. Comments tendered in connection with the 2004 modifications led to significant changes and substantial improvements.

Even if these submissions are ultimately unavailing where USDOL is concerned, they could also set the stage for court challenges or might motivate efforts to overrule new regulations under the Congressional Review Act.

UPDATED 10 03 14: According to *Employment Law 360*, Solicitor of Labor M. Patricia Smith has disclosed that the U. S. Labor Department will not meet the November deadline. She is quoted as

saying, "We are months away from a proposed regulation." Smith reportedly expressed her hope that the proposal will be published "early" in 2015.

UPDATED 11 25 14: The latest U.S. Labor Department regulatory agenda indicates that the agency now plans to publish a Notice of Proposed Rulemaking this coming February.