



Limited "Insurance Adjuster" Exemption Proposed

Insights

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Recently introduced legislation proposes to exempt "any employee employed in insurance claims adjusting" from the federal Fair Labor Standards Act's overtime requirements under certain circumstances. Under H.R. 6346 ([link to available version below](#)), introduced by Representative Denny Rehberg (R-MT) and Representatives Jo Bonner (R-AL) and Alcee Hastings (D-FL), these adjusters would be exempt while performing specified insurance-claims work under particular conditions following a "major disaster", including natural catastrophes (such as a hurricane, tornado, earthquake, or blizzard) or fires, floods, or explosions.

Restrictions And Conditions Imposed

The exemption would apply only for a 24-month period following the major disaster. Each employee would have to receive an average weekly income of at least \$591 per week for the period in which the work is performed. Among the duties falling within the exemption would be interviewing insureds and others with relevant information, inspecting property damage, making recommendations about coverage, liability, or value, and negotiating settlements.

Employees of companies (or their affiliates, as defined in the exemption) that underwrite, sell, or market insurance would not be eligible. Instead, the provision would apply only to those brought in by independent companies that possess the necessary licenses, provide worker's-compensation coverage, and make the required tax withholdings.

Exemption Would Supplant State And Local Law

A number of federal courts have found the FLSA's "administrative" exemption to apply to insurance adjusters in a variety of situations. However, a California appellate court reached the opposite conclusion in July, when it held that adjusters were not exempt under that state's version of the administrative exemption.

The California decision underscores the potential for differences in or divergent interpretations of similar-sounding exemptions in the FLSA and analogous state or local laws. The drafters of H.R. 6346 apparently intend to eliminate this possibility. The proposal says that the new exemption would "exclusively" displace state or local provisions with respect to qualifying workers.

H.R. 6346 has been referred to the House Education and the Workforce Committee. There is no timetable as to when it might be the subject of hearings or brought to the floor for a vote. We will

monitor the progress of this legislation in the coming months.

[HR 6346.pdf \(38.82 kb\)](#)

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