



Bill Introduced To Stop FLSA Exemption Changes

Insights

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Congressional Republicans have responded to the U.S. Labor Department's impending revisions of its much-discussed Fair Labor Standards Act Section 13(a)(1) exemption definitions by introducing legislation to nullify the proposals and/or any "Final Rule". As we have reported, USDOL's proposed changes were recently submitted to the federal Office of Information and Regulatory Affairs for a final, pre-release review.

Congress: "Go Back To Square One"

H.R. 4773 and S. 2707 are outgrowths of concerns expressed by House and Senate Republicans that, in formulating its proposals, USDOL did not adequately take into account the likely adverse effects on small businesses, non-profit organizations, industry sub-sectors, lower-wage industries, and other entities; regional, state, county, and metropolitan and non-metropolitan cost-of-living and salary differences; the curtailing of workplace flexibility the changes would represent; and the costs associated with the compliance steps employers must undertake. In addition to blocking the currently-proposed changes, the "Protecting Workplace Advancement and Opportunity Act" would require USDOL to conduct more-detailed, more-specific analyses in these respects and others before it makes any new proposals.

The bills would also require any later-proposed changes to be subject to a 120-day comment period and would prescribe a waiting period of at least one year after the publication of any eventual "Final Rule". This would push the effective date of any such rule into 2017, at least, thus leaving the future of any exemption revisions in the hands of the next President, Congress, and USDOL administration.

Other Measures

The legislation would also prohibit USDOL from modifying these exemptions' duties tests without having first proposed "specific regulatory text" for review and comment. This would eliminate the sort of uncertainty that now exists as to whether USDOL's current proposal will revise any duties-related tests and, if so, in what ways.

The bills' statements of findings take the position that USDOL has no authority to increase the regulatory salary thresholds without going through notice-and-comment rulemaking as to each such change. But to make this explicit, both versions would also expressly forbid "any automatic updates" in the salary tests.

The Bottom Line

One might hope that this well-intended legislation will forestall USDOL's exemption revisions, but the prospects for its enactment seem dim. Even if the Republican-controlled House and Senate pass it, President Obama would surely veto the measure. Each chamber would then have to override the veto with a two-thirds majority, a feat that has yet to occur during President Obama's tenure.

Employers should continue to prepare for the coming changes, rather than deferring action in anticipation of an 11th-hour reprieve.

[*Editor's Note:* The original post was modified to reflect the publication of S. 2707's actual text.]

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