



"White Collar" Exemption Changes: Keep Calm And Carry On

Insights

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Recent Congressional initiatives have targeted the impending increases in the U.S. Labor Department's dollar-amount thresholds for most of the federal Fair Labor Standards Act's so-called "white collar" exemptions.

There is of course always room for at least some hope that one of these measures will stop or defer the changes or will at least curtail their enforcement. However, we are inclined to think that the prospects for success are slim.

A Disapproval Under The CRA?

Under a federal law known as the Congressional Review Act, a joint resolution of Congress could block the revisions. A proposed measure of this kind has now been introduced, and it would provide that USDOL's revised regulations would have no force or effect.

However, there is substantial reason to question whether the resolution will ultimately be adopted by the House and the Senate. And even if it is, an override-proof veto by President Obama seems very likely.

A USDOL Appropriations Limitation?

The House Appropriations Committee recently approved a draft spending bill that would prohibit USDOL from devoting any of its next appropriation to the revised regulations. The draft specifically says, "None of the funds made available by this Act may be used to implement, administer, or enforce the final rule entitled 'Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees' published by the Department of Labor in the Federal Register on May 23, 2016 (81 Fed. Reg. 32391 et seq.)."

Nevertheless, there is considerable reason to doubt that this limitation will make its way to passage by both the full House and the Senate. If it does, it might well provoke a presidential veto.

Moreover, even if the appropriations restriction does become law, the new provisions are set to take effect by their own terms on December 1, 2016 without the need for any further USDOL action. At that point, individual claimants whose compensation does not satisfy the revisions will be free to challenge their overtime-exempt status in the future in their *own* FLSA lawsuits.

A Delay And Modification?

A bill introduced by three House Democrats would phase-in the salary increase between 2016 and 2019. Although the actual text of the "Overtime Reform and Enhancement Act" ([H.R. 5813](#)) had not been officially released at the time of publication, its sponsors say that the salary hikes would be to:

- \$692 per week (annualizing to \$35,984) on December 1, 2016,
- \$765 per week (annualizing to \$39,780) on December 1, 2017,
- \$839 per week (annualizing to \$43,628) on December 1, 2018, and to
- \$913 per week (annualizing to \$47,476) on December 1, 2019.

Furthermore, the bill would eliminate the every-three-year "update" (that is, a probable tri-annual increase) provided for in the coming regulations.

There has as yet been no indication that the bill would affect changes in the total-annual-compensation threshold for the "highly compensated" version of the exemptions.

U.S. Labor Secretary Tom Perez released a [statement](#) opposing the measure, saying in part, "The President and I think that American workers have waited long enough for a fair day's pay for a long day's work. * * * By delaying implementation and removing the automatic updating of the salary threshold, the proposed legislation stands in stark contrast to that vision." The reference to President Obama probably signals that he will veto the proposal even if Congress passes it.

The Bottom Line

If one (or more) of these provisions actually becomes law, so much the better.

But our view continues to be the one we [expressed](#) in connection with legislation introduced before the revised regulations were published: Employers should continue their preparations for the coming changes, rather than deferring action in anticipation of a highly-speculative, 11th-hour reprieve.