

FLSA EXEMPTION UPDATE: JUST WHAT IS HAPPENING, EXACTLY?

Insights

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In recent days, a number of articles and other communications created the impression that momentous changes have occurred with respect to proposed revisions of certain federal Fair Labor Standards Act exemptions. Here is what's really going on.

Last spring, the U.S. Labor Department proposed the most substantial amendments in the FLSA's executive, administrative, professional, and outside-sales exemptions in over 50 years. DOL invited comments on these modifications (and Fisher Phillips' extensive comments can be viewed on our website). Shortly after the comment period closed, unions and employee advocates mounted a vigorous anti-revision campaign. This effort focused upon persuading Congress to limit DOL's budget so as to bar the agency from finalizing most of the proposals. After months of debate and political maneuvering, on December 9 the House passed an appropriations bill containing no such limitation. The Senate passed the same measure on January 22, and President Bush is expected to sign it soon.

It is now more likely that DOL will issue its final regulations, which it hopes to do by the end of March 2004. But **NOTHING HAS CHANGED YET**, and it is too soon to predict what, if anything, will happen. For example:

- DOL might not make the March 2004 date.
- It is difficult to predict whether or how much the final rules will differ from the original proposals.
- There is likely to be a "grace period" of 60 days or more after their release before final provisions go into effect.

- There is some sentiment in Congress to invoke a law known as the Congressional Review Act to overturn whatever DOL releases.
- There is also some sentiment in Congress to move to restrict DOL's authority to modify the exemptions.

Of course, this does not necessarily mean that employers should stand pat. Due to the recent publicity, many employees might already be wondering whether the way they are paid violates the FLSA or some other law. And even employers who might not be significantly affected by the pending exemption changes still face the possibility that their employees are nonetheless starting to ask hard questions about how their compensation stacks up under *other* parts of the FLSA or under state or local wagehour requirements.

Fisher Phillips has always recommended periodic, comprehensive wage-hour compliance audits, and times like these increase the importance of getting things right before problems arise. Moreover, even though the outcome of DOL's work remains uncertain, it is still wise to assess where employees stand under *current* exemption requirements (which will be particularly worthwhile if new rules do *not* go into effect or are delayed for an indefinite time). Employers can also make at least some judgments about what an employee's exemption status might be if the proposals *do* go into effect in something close to their present form.

If you would like help in reviewing your current wage-hour compliance, or for more information, contact any office of Fisher Phillips.