



Proposed Midnight Rules Relief Act May Put An End To OSHA Recordkeeping Rule

ONEROUS WORKPLACE SAFETY RULES AMONG MANY THAT COULD FACE THE AXE

Insights

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Earlier this year, the U.S. House of Representatives voted to approve the Midnight Rules Relief Act by a vote of 238-184. This Republican-backed measure would amend the Congressional Review Act and allow Congress to overturn, *en masse*, any federal regulation enacted during the final year of a president's term. If approved by the Senate and signed into law, the Act could have broad implications for any regulation passed in 2016, including, among many other workplace law regulations, the recordkeeping rule issued by the Occupational Safety and Health Administration (OSHA) and its related anti-retaliation provisions.

Current Landscape

Presently, Congress is empowered to review and invalidate rules issued by government agencies by means of the Congressional Review Act (CRA). Enacted in 1996, the CRA provides Congress with authority to review and overturn new federal regulations issued by government agencies. It requires federal agencies to submit a report containing a copy of any proposed rule to both houses of Congress and the Comptroller General before the rule can take effect.

Congress can introduce a joint resolution of disapproval of the rule provided it does so within 60 legislative days. If the president signs Congress's resolution of disapproval, or Congress passes the joint resolution over the president's veto, the rule will be invalidated. The CRA has its greatest impact during the lame duck period between presidential administrations, as it permits the new administration to overturn last-minute regulatory actions taken by a departing executive.

Midnight Rules Relief Act

The Midnight Rules Relief Act (MRRRA) would amend the CRA in two important ways. First, it would allow Congress to introduce a joint resolution of disapproval covering *multiple* rules. Currently, the CRA requires Congress to submit separate joint resolutions for each individual rule of which it disapproves. Second, the Act would amend the CRA by allowing Congress to introduce a joint resolution of disapproval for any rule submitted to Congress within the *final year of a president's term*. This would significantly expand Congress's ability to overturn agency action.

The MRRRA was received in the Senate on January 5 and immediately referred to the Senate Committee on Homeland Security and Governmental Affairs. If the MRRRA is passed by the Senate in

its current form and signed by President Trump, it would allow Congress to issue a joint resolution of disapproval of several regulations issued during President Obama's final term.

Potential Impact On OSHA Rules

The OSHA Recordkeeping Regulation and its whistleblower provisions, published on May 12, 2016, would be swept up in this collection of at least 3,853 rules and regulations that could face invalidation. The OSHA rule greatly increases injury and illness data collection by requiring employers to electronically submit workplace injury information to the government, with OSHA posting this data on its public website. It also alters the circumstances under which you can require your employees to submit to a post-accident drug test and requires additional alterations to an employer's typical workplace safety policies and practices.

Congress could also reconsider several other regulations that have broad implications for employers, including:

- the U.S. Department of Labor's overtime regulations that significantly expand the minimum salary threshold for the white-collar exemption (currently on hold due to court intervention);
- the persuader rule that requires employers and their legal consultants to report any arrangement in which consultants attempt to influence employees during unionization drives (also on hold due to a court decision);
- the U.S. Equal Employment Opportunity Commission's regulation that requires businesses with 100 or more workers to submit new EEO-1 reports that include compensation data; and
- the Fair Pay and Safe Workplaces rule (also known as the "blacklisting" rule), which requires bidders for federal contracts worth over \$500,000 to disclose any violations of federal labor laws dating back three years (also on hold due to court review).

Conclusion

We will continue to monitor the status of this legislation and publish updates as additional actions are taken. If you have any questions about these developments or how they may affect your business, please contact the authors at TLogsdon@fisherphillips.com (502.561.3971), LClaycomb@fisherphillips.com (502.873.4002), any member of our Workplace Safety and Catastrophe Management Practice Group, or your regular Fisher Phillips attorney.

This Legal Alert provides an overview of proposed legislation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

Related People





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