

30 Days until Implementation of New Federal Overtime Pay Regulations – Will they be Delayed, Modified, or Stopped?

Tuesday, November 1, 2016

There is now only one month left until the *Department of Labor's (DOL's)* December 1, 2016 deadline for employers to come into compliance with the new federal overtime pay regulations. As most employers are aware, those regulations more than double the minimum salary threshold required to be considered “exempt” from the overtime pay requirements of the *Fair Labor Standards Act (FLSA)* – boosting the salary from \$455/week to \$913/week (\$47,476 annually). A more detailed summary of what those final regulations require [can be found here](#).

Many employers have wondered whether the final regulations will be delayed, modified, or rescinded, thereby making compliance unnecessary. At least three events may affect the need to comply: (1) the passage of legislative bills in both the U.S. House of Representatives and Senate; (2) two significant lawsuits in the Federal District Court in Eastern Texas challenging the lawfulness of the regulations; and (3) the November 8 presidential election.

The House has [passed a bill](#) which would delay implementation of the regulations until June 1, 2017, and the Senate has passed a similar proposal. The Senate has also [introduced a bill](#) that would phase in certain aspects of the final regulations over a five year period, while rescinding other requirements. However, nothing has been passed by both the House and Senate and sent on to the president for his signature, and with Congress not currently in session due to the upcoming election, a vote on any such measure is unlikely before December 1. More importantly, President Obama has already publicly vowed to veto any such legislation. It also appears unlikely, based on the current makeup in the Senate and the House, that a presidential veto could be overridden by the constitutionally required two-thirds “super majority” vote. Thus, the legislative attack seems to be a long shot, at least in the short term.

Likewise, the litigation attack faces its own logistical and time constraints. The Court recently set a hearing for November 16, 2016, to address the request for a preliminary injunction, just two weeks from the December 1 deadline. Furthermore, there is no guarantee that the judge will (1) issue an order by then; (2) grant a preliminary injunction stopping all or part of the regulations; or (3) mandate that any such injunction (even if granted) will have a nationwide effect. One can also not ignore the fact that the judge presiding over both lawsuits is a recent Obama appointee.

The last variable (and a true wildcard) is the November 8 election. Regardless of outcome, the new president will not be sworn in until January 20, 2017—well past the December 1 deadline—and will have no power to change anything before that, necessitating that employers come into at least interim compliance. Furthermore, if the Democrats retain the oval office, it is unlikely that any changes will be made to the DOL's regulations in the near term.

Given the above, it is recommended that employers continue to analyze those positions they currently classify as exempt and make any necessary changes to come into compliance with the overtime pay regulations by December 1, 2016.