

U.S. Department of Labor Signals Coming Changes

Written by Jonathan A. Keselenko, Christopher Feudo, Erin Olesen

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On June 27, 2017, the U.S. Department of Labor (DOL) made two announcements that signal a change of direction for the new Administration. First, the DOL announced in a press release that it would return to its decades-long practice of issuing “opinion letters,” which provide employers formal, written guidance on specific labor law issues. Second, the DOL began the process for seeking public notice and comment on the Obama DOL’s rule increasing the salary threshold for overtime exemptions, indicating that the DOL is considering eliminating or changing the controversial rule.

Opinion Letters

For more than 70 years, the DOL issued opinion letters, which were official administrative guidance that explained how the DOL would apply the FLSA, FMLA and a select few other laws in specific factual scenarios. Employers could rely on the opinions and use them to defend actions taken in line with those opinions. In 2010, however, the DOL stopped issuing opinion letters, opting instead for broader “Administrator Interpretations.” These Interpretations were far fewer in number and offered more general guidance, and they were criticized by employers for their perceived pro-employee slant. (The DOL under President Trump has since revoked two of these Interpretations.)

On June 27, the DOL announced that it would resume issuing opinion letters. Labor Secretary Acosta explained that the policy shift was intended to benefit employees and employers by providing “a means by which both can develop a clearer understanding of the Fair Labor Standards Act and other statutes” and allowing employers to focus on “growing their businesses and creating jobs.”

The DOL has set up a webpage where the public can view existing guidance or request an opinion letter. The website contains specific instructions about how to request an opinion letter, what to include in a request, and where to submit the request.

Overtime Rule

On the same day, the DOL also announced that it sent a Request for Information (RFI) to the Office of Management and Budget (OMB) related to the Obama DOL’s overtime rule, which, among other things, increased the minimum salary for the executive, administrative and professional worker exemptions. (The firm’s previous alerts on the rule can be found here: [Department of Labor Proposes New Regulations Regarding “White Collar” Exemptions Under the Fair Labor Standards Act](#); [U.S. Department of Labor Releases Final Rule Revising “White Collar” Exemptions](#); [New Overtime Rule Goes Into Effect](#); [Federal Court Blocks New Overtime Rule](#).) Once the RFI is published, the public has an opportunity to comment.

The new overtime rule had been scheduled to take effect on December 1, 2016, but a federal court in Texas granted a preliminary injunction delaying implementation of rule while a legal challenge to it was pending. The Department of Justice appealed the decision, and the case remains on appeal in the Fifth Circuit Court of Appeals.

While the RFI could be the first step towards the rule’s official demise, the DOL may be considering modifying the rule in some way. In statements to a Senate subcommittee on June 27, Secretary Acosta noted that the request “would ask the public to comment on a number of questions that would inform our thinking,” and, while the rule’s salary threshold would be “just too high for many parts of the country,” he urged the public to show the DOL “how to write a good overtime regulation.”

Together, these changes show that the new DOL is moving in a more employer-friendly direction than the agency had during the prior

Administration.

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