



Delays in Washington – Who Would Have Guessed?

White Collar Exemption Revisions Delayed Until At Least July 2016

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Just before Thanksgiving, the Department of Labor (“DOL”) [announced](#) in its Fall 2015 regulatory agenda that it will not finalize its new Fair Labor Standards Act (“FLSA”) regulations revising the “white collar” exemptions until [July 2016](#) – at the earliest.

As we [reported](#) earlier in the year, the DOL’s proposed new regulation changes the minimum salary threshold to qualify for a “white collar” exemption from overtime pay requirements from \$23,660 per year to an estimated \$50,440 per year (e.g., 40th percentile of full-time salaried workers). The DOL also increased the minimum salary threshold needed to qualify for the highly compensated employee exemption from \$100,000 per year to approximately \$122,148 per year (e.g., 90th percentile of full-time salaried workers). This rule is expected to change the exempt status of millions of employees who are currently exempt from overtime requirements to non-exempt status – requiring the payment of overtime.

The DOL stated that it needed more time to review the more than 250,000 comments it received regarding the proposed rule. Typically, the DOL’s regulatory agenda deadlines are more aspirational, rather than a date certain. DOL Solicitor of Labor, Patricia Smith, stated a few weeks earlier that the rule might not be issued until “late 2016.” Nevertheless, employers should still plan for the anticipated changes proactively. For example, employers should, at a minimum, audit their workforce and determine which currently exempt employees earn less than \$50,440 per year and create a plan for how they would like to treat them after the proposed rule is finalized. Regardless of when the new rule is finalized, due to the presidential election in November 2016, it is likely that the DOL will want to implement the new rule before a new President is sworn-in to office. This may create a shorter implementation timeline for the new rule. For example, when the

DOL last revised the “white collar” exemptions in 2004, it provided 120 days for employers to review the new regulations and make necessary changes. Depending on when the new rule is finalized, the implementation period could be much shorter.

ADA Website Accessibility Regulation Delayed Until 2018

Additionally, the U.S. Department of Justice (“DOJ”) has also delayed its anticipated rulemaking on heightened website accessibility requirements under Title III of the Americans with Disabilities Act (“ADA”), which applies to businesses generally open to the public. The DOJ took its first steps toward regulating the accessibility of businesses’ websites back in 2010 when it issued the Advance Notice of Proposed Rulemaking on Accessibility of Web Information and Services Provided by Entities Covered by the ADA. But the agency recently announced that it does not anticipate issuing any regulations on website accessibility under Title III until 2018. Despite the delay, the DOJ and private plaintiffs continue to pursue enforcement actions and lawsuits against businesses to pressure them to create “equal access” websites. The “equal access” standard is a general ADA principle that does not yet specifically apply to websites; so it remains to be seen what standard will develop from the rulemaking process. Nevertheless, given the DOJ’s enforcement actions, businesses should consider proactively reassessing the accessibility of their websites, rather than passively awaiting the regulations in 2018. For example, people who are blind require assistive technologies to either read website text aloud or convert it to braille. A business can increase its website accessibility by adding text equivalents to every image and posting documents in a text-based, rather than PDF, format in order to ensure compatibility with assistive technologies.

If you need more information or assistance preparing for these changes or any other aspect of labor and employment law, please contact [Neal Shah](#), [Tessa Castner](#) or any other member of Frost Brown Todd’s [Labor and Employment](#) practice group.

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