



Construction Industry Round Table

Regulatory News

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5/19/2016 – DOL’s Overtime Salary Pay Level Rule Among those “Rushed out the Door” by the Administration

As predicted during the CIRT Spring Meeting, the Administration is moving fast to “drop” all of its agency rulemakings before the impending “60 Congressional session day” window opens. . . leaving vulnerable any last minute regulatory proposal/change to potential review and rejection by a new incoming Administration and Congress. The little known and/or used “*Congressional Review Act*” allows Congress to essentially have a stop over any new regulation – but, this has been seldom used since the President can veto the bill and send it back to Congress for a required override. (Given the Administration promulgated the rulemaking, it is nearly impossible to pass such a rejection and not expect it vetoed . . . *except*, if it is when Administrations change after a presidential election, such as in the spring of 2001). With this deadline for the agencies to act approaching (some placed it on Monday, May 16th), the Obama Administration is rushing rules “out the door”. . . just in case a Republican captures the White House while maintaining control of Congress.

One such proposed rule “dropped” is the Department of Labor’s new pay level required for any employee to be considered a salaried worker – i.e., “exempt” from overtime rules. The proposal (effective December 1, 2016) will jump the pay level from around \$23,600 to over \$47,000, (as revised this is proposed in steps spread over three years). CIRT and most business organizations strongly opposed the rulemaking – not because salaried employees shouldn’t have higher wages to warrant their exempt status, but rather because the “*one size fits*” all mentality, the arbitrary overreach of the federal government to make such large changes whenever it feels like it, without economic or global marketplace justification . . . and the concern it will damage younger “professionals” who will be placed under strict hourly constraints as a result of this DOL fiat decision. [See, CIRT’s story ([8/27/15](#)) and comment letter ([9/03/15](#))].

Details:

The rule, will significantly increase the minimum salary level for “white collar” employees to qualify as exempt from overtime pay requirements. Under the new revised rule, no employee who has a guaranteed salary of less than \$47,476 will qualify as exempt under the executive, administrative, or professional exemptions. That’s more than double the current minimum salary level of \$23,660 (only slightly lower than the Labor Department’s proposed \$50,440). Additionally, the final rule includes a mechanism for automatically updating the salary threshold every three years (a change from the proposal of yearly adjustments). The next automatic update to the salary threshold would be on Jan. 1, 2020, and the new salary level will be announced 150 days before it takes effect. The minimum salary level is set based on the 40th percentile of wages of full-time salaried employees in the lowest wage Census region (currently, the South). Also, the Labor Department did not make changes to the “duties test,” part of the three-pronged test for establishing exemption from overtime eligibility.