

PUBLICATION

DOL's Right-to-Know Rule Delayed Until Election

February 8, 2012

For the past two years, the U.S. Department of Labor (DOL) has discussed revising its recordkeeping regulations under the Fair Labor Standards Act (FLSA) to require every employer who classifies an employee as exempt to prepare a written justification for the exemption. This justification would then have to be provided to the employee and be made available to the DOL for its review.

This expected regulation immediately drew the concern of the employer community when it was reported, and its status has been closely monitored by the business community in the interim.

The DOL's timeline for issuing new regulations is published semi-annually in the Unified Regulatory Agenda. First proposed to be issued in August 2010, the regulation's debut has been delayed twice more – to April 2011 and again to October 2011. In the meantime, no proposed regulation has even formally been submitted for review by the White House Office of Management and Budget's Office of Information and Regulatory Affairs.

In the most recent edition of the Unified Regulatory Agenda, published on January 20, 2012, the DOL moved its "Right to Know" rules into a category labeled "Long-Term Actions," and removed any projected date for their issuance. "Long-term actions" are defined as "items under development but for which the agency does not expect to have a regulatory action within the 12 months after publication of this edition of the Unified Agenda." Given the pending election year, it appears the DOL does not plan to take action on its Right to Know rules at least until January 20, 2013.

Judging by recent statements by Acting Administrator Nancy Leppink, however, the issue is will likely reemerge should the current administration remain in office. Said Leppink, "the proposal is one of the Wage and Hour Division's priorities. We're continuing to work on [it]."