


DECEMBER 1, 2015 | REGULATORY & GOVERNMENT OVERSIGHT

# Federal Regulatory Activity Remains Active for Employers in 2016

2015 has been a busy year for government agencies in terms of Labor & Employment Rulemaking, and this trend will only continue into the New Year. Thus, as the holiday season swings into full gear and the end of 2015 is right around the corner, we want to take this opportunity update you on important Labor & Employment regulations rules that are set to be released in the coming months.


## Rules issued by the U.S. Department of Labor's Wage and Hour Division

- Revisions to Overtime Regulation.**  As we have previously explained [here](#), the Wage & Hour Division (WHD) of the U.S. Department of Labor (DOL) has released proposed regulations that will dramatically expand the number of workers who could be eligible for overtime. Specifically, the WHD has proposed raising the minimum salary threshold for employees to be exempt from overtime from the current level of \$455 per week to \$970 per week, or \$50,440 per year. In addition, the WHD is considering whether it should modify the existing "duties" test in order for a worker to be exempt from overtime. There have been nearly a quarter of a million comments submitted to the WHD regarding these new regulations. It is currently anticipated that the WHD will issue its final regulations in the summer of 2016.
- Impact of the Use of Electronic Devices by Nonexempt Employees on Hours Worked.** The DOL plans to issue a Request for Information (RFI) to gather information about employees' use of electronic devices to perform work outside of regularly scheduled work hours and away from the workplace, as well as information regarding last minute scheduling practices being utilized by some employers that are made possible in large part by employees' use of these devices. While this is not intended to become an actual rule at this time, the information gathered may be used to support some form of guidance in conjunction with the overtime regulation. The RFI is expected that to be issued in February 2016.
- Regulations Requiring Federal Contractors to Provide Paid Sick Leave.** Executive Order 13706 requires federal contractors and all levels of subcontractors to provide paid sick leave at the rate of one hour per every 30 hours worked, up to 7 days annually. Contractors include any company merely leasing space from the federal government such as a day care center in a federal office building. The Executive Order specifies the purposes for which this leave must be available, which include both the employee's health and those of their family. The terms of when this leave can be used are taken directly from the Healthy Families Act, including making the leave available to deal with domestic violence. It is anticipated that a proposed regulation implementing this Executive Order will be issued in February 2016.

### Rules issued by the U.S. Equal Employment Opportunity Commission

- In April 2015, the U.S. Equal Employment Opportunity Commission (EEOC) issued a notice of proposed rulemaking to amend the regulations implementing the Americans with Disabilities Act (ADA) relating to employer wellness programs. Subsequently, as we described [here](#), on October 30, 2015, the EEOC issued proposed changes to its regulations implementing Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) as they relate to wellness programs offered through a group health plan. It is currently anticipated that both the ADA and GINA changes will become final in February 2016.

### Rules issued by the U.S. Department of Labor

- **Persuader Rule.** The DOL has strict rules that require employers and their labor relations consultants, including attorneys, to report any activity by these consultants that can be construed as an attempt to  “persuade” employees regarding their right to organize a union and bargain collectively. The current rules, which are contained in the Labor-Management Reporting and Disclosure Act (LMRDA), contain an exemption to the reporting requirement for labor relation consultants who provide employers with “advice” without engaging in actions that attempt to “persuade” employees regarding union activities. This exemption has created a perceived loophole that the DOL is attempting to close with revised rules. After numerous delays spanning the last three years, the proposed rule is now scheduled to be finalized in March 2016.
- **Notice of Proposed Rulemaking on Government Contractors Regarding Discrimination on the Basis of Sex.** In January 2015, the DOL’s Office of Federal Contract Compliance Programs (OFCCP) issued a notice of proposed rulemaking (NPRM) that would rescind the existing sex discrimination guidelines for government contractors (found at 41 C.F.R. part 60-20) and propose provisions that address current workplace practices and issues and align contractors’ obligation with current law and legal interpretations. The final rule is expected to be issued in December 2015.
- **Compensation Data Collection for Government Contractors.** In August 2014, the OFCCP announced a Notice of Proposed Rulemaking requiring covered federal contractors and subcontractors with more than 100 employees to submit an annual Equal Pay Report on employee compensation. The NRPM was developed to enable OFCCP to direct its enforcement resources toward those federal contractors and subcontractors whose summary compensation data suggest potential pay violations. The OFCCP also proposes to release aggregate summary data on the race and gender pay gap by industry and EEO-1 category to encourage contractors to review their pay data using the same metrics as OFCCP and to take voluntary necessary measures to achieve full compliance. The final rule is expected to be issued in May 2016.

### Rules issued by the U.S. Department of Justice

- **Website Accessibility under the Americans with Disabilities Act.** In September 2010, the U.S. Department of Justice (DOJ) announced that it would issue new regulations to address the accessibility of public accommodations, but has since delayed issuance of these new regulations. These proposed regulations are expected to provide formal agency guidance regarding public accommodations’ obligations to make websites accessible to deaf and blind individuals. Although it was previously thought that the DOJ would be issuing its new regulations in Spring of 2016, the DOJ has now said that new regulations would not be issued until 2018. Thus, the state of the law regarding the applicability of Title III of the ADA to company websites will likely remain in flux for the next several years.

