

August 2017

A monthly digest of news and information of interest to HR professionals.

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United States Department of Labor Continues Efforts to Reverse Obama Era Regulations and Guidance

By: By Margaret J. Lockhart, OSBA Certified Specialist – Labor and Employment, Marshall & Melhorn, LLC



The United States Department of Labor (DOL) has been busy this summer rolling back or delaying regulations and guidance it issued during the Obama administration.

The DOL pre-viewed its intention to roll back regulations that raised the minimum salary to qualify for the “white collar” overtime exemptions under the Fair Labor Standards Act (FLSA). Employers spent substantial time in 2016 preparing to implement new policies and salary

structures to comply with the new overtime rule by the December 1, 2016 deadline. A federal district court in Texas enjoined the rule in a case filed by 21 states and a business coalition. In briefs filed in the expedited appeal of that ruling, the DOL has indicated that it wants the court to address only the issue of whether the DOL has the authority to establish a minimum salary for purposes of overtime exemptions. The DOL announced in its reply brief that it “has decided not to advocate for the specific salary level (\$913 per week) set in the final rule at this time,” and that it “intends to undertake further rulemaking to determine what the salary level should be.”

DOL Secretary Alexander Acosta also announced in June, 2017 that the DOL has withdrawn its informal guidance on joint employment and independent contractors. The July 15, 2015 Administrator’s Interpretation on independent contractors took the position that most workers are employees under the FLSA, and not independent contractors. The January 2, 2016 Administrator’s Interpretation advised that the expansive language of the Fair Labor Standards Act (“suffer or permit to work”) should be used in determining joint employment status. This was a standard much broader than the common law test or the standard used under the NLRA or OSHA.

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On June 28, 2017, OSHA issued a notice that it proposes to delay, from July 1, 2017 to December 1, 2017, the electronic reporting compliance date of its rule regarding tracking of workplace injuries and illnesses. OSHA indicated that additional time was needed to review law and policy questions raised by the rule. OSHA invited the public to comment on the proposed extension of the deadline. Some industry groups have recommended that the implementation date be delayed even further, to July 1, 2018, to give the DOL sufficient time to consider revisions to the rule.

The DOL announced on June 29, 2017 that it would be publishing a request for information (RFI) on the fiduciary rule to allow the public “to provide data and information that may be used to revise the rule and associated exemptions.”

In a notice published in the Federal Register on June 12, the Office of Labor-Management Standards announced that it intends to rescind what has become known as the “persuader” rule. The rule was scheduled to take effect April 15, 2016, but was quickly enjoined by a federal district court in Texas. The DOL has filed a motion to hold the appeal in abeyance, indicating that it intends to begin proceedings to rescind the rule.

The DOL also announced in late June that the Wage and Hour division will once again issue opinion letters interpreting the FLSA and other federal wage and hour law. This will allow employers and advocacy groups to seek authoritative written guidance regarding specific situations or pay practices. Secretary Acosta has stated that opinion letters “will benefit employees and employers as they provide a means by which both can develop a clear understanding of the Fair Labor Standards Act and other statutes.”

Payroll True-Up Period for Private Employers

By: CareWorksComp



UPDATE! The payroll True-up period for **private employers** begins July 1, 2017. Payroll true-up reports are due to BWC **no later than Aug. 15, 2017**.

At the end of each private employer policy period (July), it is necessary to reconcile estimated payroll with actual payroll. This is called the True-up. This report can be completed online at: <http://ow.ly/4mWUlm> or over the phone by calling 1-800-644-6292.

This payroll True-up process is part of prospective billing, and as a result, Ohio businesses are required to reconcile their actual payroll annually for the prior policy year and also reconcile any differences in premium paid. According to BWC, the True-up allows more accurate premium calculation. Even if actual payroll for the year matches the original BWC estimate or a business had zero payroll, the True-up report must be completed.

The quickest and easiest way to True-up is online with a BWC e-account. If you do not have a BWC e-account you can create one by signing on to: <https://www.bwc.ohio.gov/SelfSvcAccountAdmin/newacc.asp>.

You can also complete the True-up through the BWC call center however wait times may be extremely high, as a result BWC encourages the use of their online reporting system.

IMPORTANT NOTE:

Again, **August 15, 2017** is the due date for your True-up report to be completed with BWC. This is a critical deadline, as the BWC has indicated that if a business does not complete the True-up timely, they may not be eligible for current, and future alternative rating and premium discount programs such as Group Rating and Group Retrospective Rating. Once more, reports must be submitted either online at (<http://ow.ly/4mWUlm>) or by phone at 800.644.6292.

Below are a couple of YouTube video links that you may find helpful in the process:

<https://youtu.be/dmYEtUGLEnQ>

<https://youtu.be/YMasIG0eq-M>