

Senate Action Delays Green Light on Overtime Regulations Stay Tuned for Imminent Developments

As we reported to you in April 2003, and as most of you know, the Department of Labor has proposed significant revisions to the "white collar" exemption rules governing which employees may be entitled to overtime under the Fair Labor Standards Act. The proposed regulations, which would directly affect the overtime pay practices of virtually every employer, created a political firestorm and led to Congressional efforts to block their implementation. After veto threats by the White House, late last year the House and Senate negotiators decided to remove any restrictions on the new regulations from a pending omnibus spending bill – clearing the way for the implementation of the new regulations early this year. All that remained was a final Senate vote in January authorizing the omnibus spending bill.

The Senate did not settle the matter today. First, Senator Specter (R-PA) held hearings about the proposed regulations. Then, as has been widely publicized, in the first vote of this legislative session occurring just hours before President Bush's State of the Union address, the Senate failed to muster enough votes to cut off a filibuster on the spending bill. As a result, the spending bill will continue to be debated and Senators will be engaged in behind-the-scenes negotiations on the stumbling blocks to final agreement, a critical one of which is the Democrats' opposition to the overtime regulations. There is an urgency to pass the spending bill, since in the unlikely event the Senate does not authorize it, several cabinet departments will have to operate at last year's budget, thereby jeopardizing billions of dollars in new programs.

Regardless of the timing and outcome of the spending bill, we believe final overtime exemption regulations will be implemented within the next couple of months (although the scope of the revisions may be altered). These regulations will require careful analysis by employers, accompanied by appropriate changes to job duties and descriptions, as well as possible adjustment of pay practices and procedures. Virtually all employers -- private, non-profit, and governmental -- are likely to be affected.

The issue is of enormous concern to employers, who seek clarity in interpreting overtime exemptions that have not been changed since 1949. Seyfarth Shaw LLP continues to monitor the situation closely and we will alert you by email as the situation develops. Seyfarth Shaw is partnering with the Society for Human Resource Management ("SHRM") to provide national seminars to advise employers about the new regulations once they are issued.