

## Senate Clears Way For New FLSA Exempt Status Rules To Be Issued Soon

### Employers Are Encouraged To Schedule Workforce Classification Reviews Now

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As we reported in our email Monday night, the Senate was mired in a parliamentary morass over the Department of Labor's proposed revisions to its "white-collar" exemption rules. Just a few hours ago, the Senate broke a filibuster and passed the omnibus spending bill, sending it to the President's desk, where Mr. Bush is expected to sign it. This essentially clears that last major hurdle standing in the way of the Department's issuance of final rules. We expect the final rules to be issued sometime in the next several weeks.

The rules would set a minimum salary level of \$22,100 (\$425/week) to establish exempt status. The rules would also revise several important aspects of the *Executive, Administrative, Professional and Outside Sales* exemptions, and they would add special provisions for a new category of *Highly Compensated Employees*, paid \$65,000 annually. For a complete review of the proposed rules, see our *Management Alert* dated April 8, 2003.

Opponents of the new rules, spurred by the AFL-CIO, vow to continue their fight against them, including attempted court injunctions to block the rules or an attempt to invoke the rarely used Congressional Veto Act. Neither of these techniques is likely to succeed.

#### Employers Will Need to Review Their Exempt Status Jobs

The new rules will be the first substantial changes in more than 50 years to the way employers determine whether they are obligated to pay employees overtime compensation. Although the final rules may well contain new or altered definitions, as a result of the more than 2,000 substantive comments received by the DOL in response to the draft revisions issued on March 31, 2003, their impact on virtually all employers is likely to be significant.

Changes in the exempt status rules will require careful analysis by employers, accompanied by appropriate changes in job duties and descriptions. Virtually all employers – private, non-profit and governmental – will be affected. Some employees who are currently exempt from overtime will likely become non-exempt under the new rules, and vice-versa. *Seyfarth Shaw encourages employers to act now to schedule comprehensive reviews to achieve compliance with, and make appropriate changes in employee status in accordance with, the anticipated rule changes.*

Seyfarth Shaw has prepared a comprehensive review program for all employers, which will enable them to understand rule changes, evaluate job duties and descriptions as appropriate, and design employee communication programs to implement policy changes in the most effective manner. Employers are encouraged to indicate their interest in a review as soon as possible, so that we may schedule reviews in a timely manner. If you would like information about our review program, simply contact your Seyfarth Shaw attorney or email Meridith Fee at [mfee@seyfarth.com](mailto:mfee@seyfarth.com).

Seyfarth Shaw will keep you updated on the progress of the DOL rule changes in the coming weeks.

### **Seyfarth Shaw LLP**

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