

Management Alert



THE DEPARTMENT OF LABOR'S QUESTIONS REGARDING THE DUTIES TEST FOR EXEMPT EMPLOYEES

The Department of Labor's Notice of Proposed Rule Making for changes to the exempt status regulations, issued on June 30, 2015, does not include a specific proposal for amending the "White Collar" exemption duties test. Instead, the NPRM asks stake holders to comment on the following questions regarding the duties test:

- What, if any, changes should be made to the duties tests?
- Should employees be required to spend a minimum amount of time performing work that is their primary duty in order to qualify for exemption? If so, what should that minimum amount be?
- Should the Department look to the State of California's law (requiring that 50 percent of an employee's time be spent exclusively on work that is the employee's primary duty) as a model? Is some other threshold that is less than 50 percent of an employee's time worked a better indicator of the realities of the workplace today?
- Does the single standard duties test for each exemption category appropriately distinguish between exempt and nonexempt employees? Should the Department reconsider our decision to eliminate the long/short duties tests structure?
- Is the concurrent duties regulation for executive employees (allowing the performance of both exempt and nonexempt duties concurrently) working appropriately or does it need to be modified to avoid sweeping nonexempt employees into the exemption? Alternatively, should there be a limitation on the amount of nonexempt work? To what extent are exempt lower-level executive employees performing nonexempt work?

Please contact your Seyfarth Shaw lawyer or the Firm's 541 Amendments Task Force with your feedback on these important questions. We are leading efforts across the country to ensure our business clients' perspective is taken in to account by the Department of Labor as it considers changes to the duties test under the FLSA.

Seyfarth Shaw 541 Amendments Task Force

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