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The Summer the DOL Turned Deregulatory: Hot Workplace Changes Employers Should Know About

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This summer, the U.S. Department of Labor (DOL) came in hot, making — and proposing to make — changes to workplace rules that could affect employers of all industries. The DOL of the new administration is certainly diving right in, but do employers need to sweat the changes? This post breaks down the new and prospective changes, along with key considerations, to help employers chart their paths forward toward Q4 and beyond.

PAID Is This Summer's Hot Trend

This summer, DOL's Wage and Hour Division made a splash by relaunching a program (originally launched under the first Trump administration) that allows employers to resolve potential wage and overtime violations of the Fair Labor Standards Act (FLSA) by self-auditing and voluntarily reporting potential violations. The program, called the Payroll Audit Independent Determination (PAID) program, also applies to certain Family and Medical Leave Act (FMLA) violations, and helps employers right their wrongs and settle alleged violations expeditiously without being subject to the punishment of paying civil penalties or liquidated damages. Speaking of liquidated damages, the Wage and Hour Division has recently retreated to the position that the FLSA does not authorize the agency's pursuit of liquidated

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damages at the administrative investigation level. And so, with the change of the tide, the DOL will once again refrain from seeking liquidated damages in any of its pre-litigation attempts to resolve administrative wage violations. The agency's ability to recover liquidated damages — previously a big part of the risk analysis for employers at the investigative level — is now reserved exclusively for litigation. As such, employers embroiled in administrative wage investigations will no longer be seeing "double."

Employers considering whether to participate in PAID should know the voluntary program has caveats. Those who are not eligible include the following, among other disqualifying factors: (1) employers that participated in the program within the last three years to resolve potential violations from the same practices at issue in the proposed self-audit, or are currently in an investigation or litigation alleging violations of the same pay or leave practices at issue; and (2) employers found to have violated the FMLA or the minimum wage or overtime requirements of the FLSA within the last three years.

With the reintroduction of the PAID program, most employers can play offense, while avoiding extra penalties. The shifting focus of the DOL away from penalizing and toward compliance should both help resolve alleged violations more quickly and efficiently and allay the stress and expenses of potential liquidated damages during DOL investigations. However, employers must remain mindful of potential rights employees may have under applicable state or local laws that may not be extinguished despite the employer's voluntarily compliance in PAID.

Rescinding Notice and Comment Periods...

The new administration is also directing the DOL and other agencies to make waves to the agency rulemaking process altogether. While repealing

agency-created rules and regulations previously required a prior notice and comment period, President Donald Trump's recent memoranda to federal agencies instructs them to repeal all "facially unlawful" regulations *without* a notice and comment period, where doing so is consistent with the "good cause" exception in the Administrative Procedure Act. According to the memoranda, "notice-and-comment proceedings are 'unnecessary' where repeal is required as a matter of law to ensure consistency with a ruling of the United States Supreme Court." Not missing a beat, the DOL published a final rule on July 1, 2025, that rescinds its policy of voluntarily using formal notice and comment rulemaking procedures for certain actions where the Administrative Procedure Act did not legally require it. Whether and to what extent agency rules or regulations may be washed away through the "good cause" exception remains to be seen.

...and Removing Interpretive Rules Enacted Without Notice and Comment Periods

On the flipside, the DOL is pursuing the removal of certain interpretive rules and policy statements on the FLSA that were not originally issued, or subsequently amended, through the use of notice and comment rulemaking. The comment period to weigh in on what provisions should be retained, and what kind of sub-regulatory guidance the DOL should use to preserve interpretive rules and policy statements that get removed from the Code of Federal Regulations, ended on August 1. Wait and see which interpretive guidance and policy statements will sink or swim.

Practically speaking, this shouldn't have too great of an effect on employers. Interpretive guidance is used to explain how the agency interprets the FLSA, but it does not have the force of law and is already subject to change or rescission based on judicial decisions or agency reexamination.

Federal Minimum Wage Rule for Federal Contractors on Its Way Out

The DOL announced it will no longer enforce the regulations implementing Executive Order 14026, which mandated a higher minimum wage ($17.75/hour) for federal contractors. The DOL plans to formally rescind the rule through the standard rulemaking process. The minimum wage for federal contractors now reverts to $13.30/hour in the interim. Employers of federal contractors should keep their eyes peeled on whether the $13.30/hour minimum wage remains or changes. For now, covered employers should maintain the status quo knowing that the higher minimum wage of $17.75 has been wiped out.

Companionship Exemption on Its Way In

As we recently blogged here, the DOL has also issued a proposed rule to restore the companionship services exemption of the FLSA. The exemption traditionally applied to third-party agencies, and exempted home health workers who provided in-home companionship services from minimum wage and overtime protections. However, a rule issued during the Obama Administration excluded third-party employers from claiming the exemption. The current proposed rule would restore the pre-2013 companionship minimum wage and overtime exemption for third-party employers and restore the overtime exemption for domestic service employees who live in clients' homes but are employed by third-party employers. The Wage and Hour Division is already directing its agency staff to cease enforcing the 2013 rule for its cases, take no enforcement action against third-party employers claiming the exemption, and loosen its analysis of whether a home healthcare worker is providing companionship services in determining whether the exemption applies.

Home care and other third-party agencies should stay in the know regarding this proposed rule, which may culminate in widescale (and welcome) changes

to their pay practices, especially if and when the 2013 rule is rescinded.

Staying Ahead of the Current

Employers should get the popcorn ready, because the DOL summer of deregulation is definitely binge-worthy, and the fall line-up should be just as compelling.

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