

From: Schimsa, Rebecca <RebeccaSchimsa@gov.sc.gov>
To: Pisarik, Holly <HollyPisarik@gov.sc.gov>
Date: 5/20/2016 1:46:31 PM
Subject: RE: DOL Overtime Rule Impact by Agency.xlsx

Here is some high level background – let me know where to dig further.

In general, challenges to federal regulations are made under the APA, which governs rulemaking, adjudications and licensing. When considering a federal rule, there are three standards of review for the court:

- (1) Substantial Evidence (usually used for formal rulemaking) – Courts are required to uphold a rule if the agency's decision is reasonable.
- (2) Arbitrary and Capricious (usually applied to informal rulemaking) – Courts consider whether the decision was based on relevant factors and whether there was a clear error of judgment.
- (3) Statutory Interpretation – Two-Step Chevron Test: First, courts must assess whether Congress spoke to the precise question at issue (if so, then courts defer to the plain meaning of the statute) and then, second, whether the agency's action is based on a permissible construction of the statute (if so, then courts defer to the agency's interpretation). Legislative regulations are given deference under a rational basis standard unless they are arbitrary, capricious, or manifestly contrary to the statute (Chevron deference).

Here, DOL issued a formal rule changing the Fair Labor Standards Act modifying the salary threshold for overtime, which was last updated in 2004. The rule stemmed from an Executive Order issued by President Obama in March 2014.

Last year, several Congressmen asked for DOL to extend the comment period but were denied and also sent a letter to DOL asking to see the evidence of outreach efforts that would justify not extending the comment period but were also denied. Earlier this year, Congressional Republicans Tim Scott and Tim Walberg also introduced a bill to kill DOL's authority to expand the overtime rule, known as the Protecting Workplace Advancement and Opportunity Act.

From: Pisarik, Holly
Sent: Friday, May 20, 2016 11:55 AM
To: Schimsa, Rebecca
Subject: Fwd: DOL Overtime Rule Impact by Agency.xlsx

Becca, Have you researched this?

Sent from my iPhone

Begin forwarded message:

From: "Patel, Swati" <SwatiPatel@gov.sc.gov>
Date: May 20, 2016 at 11:54:26 AM EDT
To: "Glaccum, David" <DavidGlaccum@gov.sc.gov>, "Smith, Austin" <AustinSmith@gov.sc.gov>, "Baker, Josh" <JoshBaker@gov.sc.gov>, "Pisarik, Holly" <HollyPisarik@gov.sc.gov>, "Schimsa, Rebecca" <RebeccaSchimsa@gov.sc.gov>
Subject: RE: DOL Overtime Rule Impact by Agency.xlsx

Austin – have you received info on potential financial impact of DOL rule from the individual agencies?
Holly, David, Becca – do you have some preliminary legal research on what NH's options are on legal action?

From: Glaccum, David
Sent: Thursday, May 19, 2016 4:40 PM
To: Patel, Swati; Smith, Austin; Baker, Josh; Pisarik, Holly; Schimsa, Rebecca
Subject: Fwd: DOL Overtime Rule Impact by Agency.xlsx

From OHR.

David M. Glaccum
Office of Governor Nikki R. Haley

Sent from iPhone

Begin forwarded message:

From: "Paul, Kevin" <Kevin.Paul@admin.sc.gov>
Date: May 19, 2016 at 4:08:10 PM EDT
To: "Glaccum, David" <DavidGlaccum@gov.sc.gov>
Cc: "Aydlette, Kim" <Kim.Aydlette@admin.sc.gov>, "Adams, Marcia" <Marcia.Adams@admin.sc.gov>, "Koch, Paul" <Paul.Koch@admin.sc.gov>
Subject: DOL Overtime Rule Impact by Agency.xlsx

David,

I have attached a file with the number of full-time employees by agency impacted the change to the salary level requirement in the Department of Labor's FLSA Overtime rules. These are employees who are currently exempt from earning overtime. These numbers exclude temporary employees. Additionally, these numbers exclude employees in teacher classifications who are not subject to the salary level requirement.

I am working on the number of classified employees impacted at colleges and universities. Estimating the number of employees impacted by the changes at institutions of higher education is difficult given the various exemptions to the salary level requirement for teacher, coaches, and academic administrative personnel. I will get you those numbers as soon as possible.

These numbers provided could be slightly higher as many part-time employees could be impacted; however, the analysis on these employees is difficult given employee work schedules. This analysis should be conducted by each agency.

Please remember that there may not be a financial impact for all of the employees listed. Agencies will need to evaluate employees who may be impacted to determine if the position will actually require overtime. Agencies may adjust work schedules for these employees to lessen the impact of any potential overtime or may raise salaries of employees who are near the salary threshold.

Please give me a call if you have questions.

Kevin Paul
Assistant Director, Division of State Human Resources

The South Carolina
Department of Administration
8301 Parklane Road, Suite A220, Columbia, SC 29223
(803) 896-5145 | (803) 896-5050 fax

Note: Act 121 of 2014 (SC Restructuring Act of 2014) abolished the Budget and Control Board. Effective

July 1, 2015, the Division of State Human Resources has been transferred to the Department of Administration. Please update your contact information.

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