

DOL "Updates" Mangle Longstanding FLSA Principles

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by John E. Thompson

Earlier this week, the U.S. Labor Department's Wage and Hour Division published a "Final Rule" entitled, "Updating Regulations Issued Under the Fair Labor Standards Act." This document, which affects not only "regulations" but also interpretative provisions of lesser status, addresses a number of subjects. These topics include (among others) fluctuating-workweek pay plans, the impact of previous changes in the minimum wage, the tip credit available for tipped employees, and the exemption status of certain employees in automobile dealerships. The "Final Rule" is effective on May 5, 2011.

This action is ostensibly the continuation of an initiative begun in 2008. At that time, the Wage and Hour Division proposed to clarify and correct certain FLSA principles and to take into account FLSA amendments that had occurred over a timeframe of more than three decades. The current administration has now transformed this undertaking into a plaintiff's-lawyer "wish list" consisting mostly of background commentary rather than the procedurally-sound adoption of actual administrative interpretations or regulations. Employers must now be prepared to explain to the courts why substantial portions of this publication should be rejected.

We are continuing to evaluate the details and will be posting additional comments and analysis.