

DOL Pushes Back Target Date for Overtime Rule

This week, the Biden Administration issued its [Spring 2023 Regulatory Agenda](#), which lays out various federal agencies' regulatory plans for the year and beyond. The Department of Labor (DOL) has extended the target date to August 2023 for the release of a proposed rule containing changes to the regulations governing the exemptions to federally mandated overtime pay. The DOL originally targeted May to issue the proposed rule.

While the details of the proposed rule remain unclear, the rulemaking is expected to include a salary threshold increase and changes to the duties test. NDA and coalition of business organizations sent a [letter](#) to the DOL last month urging the department to postpone publication of the proposed rule. NDA will continue to closely monitor the issue.

NLRB Overturns 2019 Independent Contractor Standard

On Tuesday, the National Labor Relations Board (NLRB) [issued a ruling](#) which applies a stricter standard employers must use to determine whether someone qualifies as an independent contractor. The NLRB overruled its 2019 independent contractor standard which focused on whether workers have “entrepreneurial opportunity” and returned to a common law multi-factor analysis that could lead to more workers being found to have been improperly classified as independent contractors.

Under this “independent-business analysis,” the Board stated that the analysis should turn on the questions of whether the putative contractor: “(a) has a realistic ability to work for other companies; (b) has proprietary or ownership interest in their work; and (c) has control over important business decisions,” such as scheduling, hiring, assignment of employees, purchasing equipment, and committing capital.

The NLRB’s ruling could make it more likely that workers will be found to be employees entitled to the protections under the National Labor Relations Act, including the right to organize a union. The NLRB’s ruling is likely to be challenged in federal court in the coming months. The Department of Labor is also finalizing a rule on independent contractor classification which has yet to be released.

DOL to Hold Online Seminar on Prevailing Wage Requirements

The U.S. Department of Labor recently announced that its Wage and Hour Division will offer online seminars for contracting agencies, contractors, unions, workers and other stakeholders on the requirements for paying prevailing wages on federally funded construction and service contracts.

Part of the division’s effort to increase awareness and improve compliance, the seminars will include recorded training videos on a variety of Davis-Bacon Act and Service Contract Act topics that participants can view on-demand. The division will then offer live Q&A sessions to provide additional information.

Q&A sessions on compliance issues will be offered as follows:

- Davis-Bacon Act: June 27 and Sept. 13.
- Service Contract Act: June 28 and Sept. 14.

While seminar attendance is free, [registration is required](#). Additional information, including the links to pre-recorded video trainings and virtual Q&A sessions, will be provided to participants after registration.

House Passes Bill to Bolster Congressional Review of Regulations

On Wednesday, the House of Representatives passed the Regulations from the Executive in Need of Scrutiny Act (REINS Act) which would require every new "major rule" proposed by federal agencies to be approved by both the House and Senate before going into effect.

The REINS Act also defines a "major rule" as any federal rule or regulation that may result in: an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, government industries, government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The bill now heads to the Senate where it is unlikely to pass in its current form.