

President Trump Orders Immediate Freeze on Pending Regulations

Labor & Employment Law Update

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On January 20, 2017 shortly after taking office, newly sworn in President Donald Trump directed White House Chief of Staff Reince Priebus to issue a memorandum to the heads of executive departments and agencies directing them not to send any regulations to the Federal Registry until further notice, to withdraw any proposed regulations that have not been published and to postpone for 60 days the effective dates of regulations that have been published by the Officer of the Federal Register. As stated in Priebus' memorandum, the purpose is to ensure the President's appointees or designees "have the opportunity to review any new or pending regulations" and to consider "questions of fact, law, and policy that [such regulations] raise."

With the change in administrations, this is not a surprising action. In fact, former President Barack Obama took a similar action in January 2009, at the beginning of his first term, by effectively freezing regulations that were pending from the former President George W. Bush's administration.

What Does This Mean for Employers?

This means that any proposed or pending regulations are now facing uncertainty as to whether they will go forward, be overhauled or discarded. The most prominent pending regulations that this could impact is the Department of Labor (DOL) Final Overtime Rule. While the Final Overtime Rule was set to go into effect December 1, 2016, it was blocked from taking effect by United States District Court Judge Amos Mazzant in his November 22, 2016 ruling. Since the Final Overtime Rule did not go into effect the freeze on regulations could impact the Final Overtime Rule. However, it is likely that in order to repeal or reverse the Final Overtime Rule or any other regulations that have been finalized, President Trump would need an act of Congress or have the federal department or agency propose and enact a new regulation to replace the current one. Alternatively, since the DOL has appealed Judge Mazzant's decision and pursued an expedited briefing schedule on December 1, 2016, President Trump could direct the DOL to abandon or withdraw the appeal. Thus, until the Fifth Circuit Appellate Court issues a decision on the appeal, or until such time as the President or DOL take action on the Final Overtime Rule, our recommendation, just as we suggested last November 2016 in response to the District Court granting an injunction on

the DOL Final Overtime Rule, is that no action be taken until the issue is resolved.

With respect to other regulations, just like we stated with respect to President Trump's executive order regarding the Affordable Care Act, it is too early to tell how or when employers will be impacted and what the new administration will ultimately do with respect to different regulations enacted during President Obama's administration and regulations that impact businesses.

For our part, we will continue to monitor developments and provide additional information as it becomes available.

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