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FAIR LABOR STANDARDS ACT

Background

Problems Congress was trying to address in passing FLSA

The Fair Labor Standards Act (FLSA) of 1938 was passed by Congress during the Depression. It established minimum wage, overtime, recordkeeping and other requirements. The purpose of the FLSA is to require an employer pay an employee wages for all time that an employee is permitted by the employer to work. Under this Act, overtime at a rate of at least one and one-half times the employee's basic rate of pay must be paid for work in excess of 40 hours in any workweek. Each workweek must be considered separately when computing overtime. There is an exemption from the coverage of the Act for an employee who works in an executive, administrative or professional ca

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Letter (Drafts)

Sept. 8/9

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As enacted, the legislation exempted government employers and employees in acknowledgement of the unique circumstances relating to governmental employment. Since its enactment, this Act has been the object of numerous Court decisions and Congressional amendments. In 1966 the Act was amended to include certain specified public employers -- school districts, public hospitals, and, with certain exceptions, transit operators. In 1968 the U.S. Supreme Court upheld the application of the FLSA to schools and hospitals. In 1974, Congress amended the FLSA and made its provisions binding on all public employers. In 1976, a U.S. Supreme Court decision exempted "areas of traditional governmental functions."

On February 19, 1985, the United States Supreme Court, in response to Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985), ruled that the minimum wage and overtime requirements of the FLSA apply to state and local governments. Congress amended the FLSA that year to change certain provisions to specifically apply to state and local government employees, including special overtime rules for employees of public agencies who work in firefighting or law enforcement activities, including correctional institutions.

Management Problems the FLSA (as amended in 1985) has created for state and local governments

Of greatest concern to state and local government are FLSA regulations which bring under the FLSA certain categories of employees previously treated as exempt "administrative" employees. Recent court rulings indicate that many governmental employers may not be in compliance with the law, which will result in substantial back payments to employees for past "over-time" worked.

Recent interpretations of the FLSA by the courts ignores the fact that government is not the same as private business. In the private sector, typically, a relatively small number of managers have responsibility for a large number of production employees. In government, often the focus shifts from producing products to administering difficult and complex laws, regulations and court orders. Generally, the government employees in question are not "hourly" production workers; they are "salaried" administrative or professional employees, and should be exempt from the FLSA.

In addition to imposing significant cost and management burdens on government, these same requirements also impede efforts in the public and private sectors to improve air quality and reduce traffic congestion. Alternative work schedules could significantly reduce the number of automobile trips required for work forces.

- For example, a person working a nine-hour-day schedule during a two-week pay period would commute to work only 9 days instead of ten during that period, resulting 45 hours of work in week one, and 35 hours in week two.

Yet, the rigidity of FLSA standards would require overtime payments for the hours in excess of 40 worked in the first week of the two-week interval. As a result, this type of scheduling becomes economically infeasible, even though it is preferred by some employees and would promote other federal policies related to air quality and traffic congestion management.

Magnitude and potential implications of recent lawsuits and rationale of court in reaching its findings

Until recently, the DOL was expected to provide regulations which would deal with the unique circumstances related to government employees in relation to these new provisions of the law relating to salary basis tests relative to exemption from overtime payment requirements. Although DOL issued an Advance Notice of Proposed Rulemaking, no Proposed Rulemaking was issued. Courts have been left to interpret the applicability without DOL regulatory guidance.

In 1991, a Court decision, Abshire v. Kern County [111 S.Ct. 1341 (1991)], has become the basis for litigation against government employers regarding issues related to maximum work hours and overtime pay requirements. The Court found that a supervisory or management employee whose compensation could be reduced for absences of less than a full day must be considered an "hourly" employee--even if no deductions occurred. The FLSA requires the "hourly" employee to be entitled to overtime pay at time-and-one-half. The result is that government employers may be required to treat bona fide salaried employees has hourly employees in terms of overtime because government employers, unlike private employers, only pay employees, salaried or hourly, for hours worked unless the employee has accrued leave to cover the absence.

In March, two other Courts ruled on cases consistent with the findings in Abshire v. Kern County. On March 9, 1992, a Court ruled that fire battalion chiefs employed by the City of San Diego are hourly employees and must be paid overtime and back pay. On March 20, 1992, a Court ruled that the State of California owed 30 firefighters about $3 million in overtime pay and damages. The firefighters had argued that because the state paid them hourly and docked them for working fewer than the expected hours, they should not be considered salaried employees.

On February 10, 1992, the United States District Court of the Southern District of California in the case of Service Employees International Union, Local 102, et.al. v. County of San Diego, ruled for the plaintiffs on three separate issues, one of which was the salary issue. The Court's ruling drastically expands the impact of the Abshire decision. With regard to the "salary test," the findings by the Court in support of its conclusion regarding the salary issue are as follows:

1. Requiring employees to use their paid leave credits (e.g., sick leave, vacation, comp time) for absences of less than a day is inconsistent with salaried status.

2. The practice of paying overtime in the form of compensatory time-off or straight time overtime pay on an hourly basis is inconsistent with salaried status.

3. The practice of computing an employee's salary during a pay period by multiplying the number of hours worked in the pay period times the hourly rate of pay is inconsistent with salaried status.

4. The fact that the County's civil service employees are subject to disciplinary suspensions under the Civil Service Rules for a variety of causes, including many unrelated to safety violations expressly provided for under DOL regulations, is inconsistent with salaried status.

In order to maintain an employee's FLSA exempt status, the employer must (1) pay the employee for any amount of an absence of less than a day, regardless of the fact that no duties were performed and that the employee had available paid leave balances; and (2) cease paying employees compensatory time-off or straight time pay for overtime worked.

Another possibility, because of the scope of the Court's finding on the salary issue, would be to change employees from FLSA exempt status to non-exempt FLSA status (i.e., covered by the minimum wage and overtime provisions of the FLSA). This would have enormous overtime cost implications for state and local governments. An additional troublesome feature for state and local governments is that for FLSA covered employees who work overtime, the employer must pay the overtime in cash, and not in compensatory time-off, unless there is an agreement between the employer and the employee to pay the overtime with compensatory time-off. This provision will place even further financial pressures on public entities under circumstances where the employees insist on receiving time-and-one-half cash for their overtime worked and not compensatory time-off credits.

In either case, the recent interpretations of the FLSA in California Courts will require state and local governments to make major changes to their payroll systems. This, in itself, will have significant cost implications. Additionally, this appears to constitute an unreasonable intrusion by the federal government (through the FLSA) in dictating how state and local governments must structure their payroll systems.

Equally important, the Court's ruling with respect to the County's Civil Service Rules extends the reach of the federal government (through the FLSA) into the civil service systems established by state and local governments. The Court's interpretation of the FLSA will force state and local governments to either (1) change their Civil Service Rules relative to how they discipline their employees, or (2) no longer impose disciplinary suspensions for other than safety related reasons on FLSA exempt employees.