

HR Clinic

May 2019

Department of Labor Updates Regulatory Agenda

The Department of Labor (DOL) published its spring 2019 regulatory agenda on May 22, 2019. According to the DOL's website, the regulatory agenda is a listing of all the regulations the Department expects to have under consideration for promulgation, proposal, or review during the coming 6- to 12-month period. You can view the publication at <https://bit.ly/2W4fvrN>.

Below are some of the items on the spring 2019 agenda that employers should pay attention to.

The Wage and Hour Division (WHD) has the following on the agenda:

Joint employment – this Notice of Proposed Rulemaking (NPRM) will address how an employer can determine if they are a joint employer under the Fair Labor Standards Act (FLSA).

White-Collar Overtime Exemption – this NPRM addresses the appropriate salary cut-off for those classified as white-collar employees, exempted from FLSA overtime rules.

Regular Rate – the WHD is looking at “more modern” forms of compensation and whether those must be included in the regular rate of pay when determining overtime pay requirements.

Tip Regulations - this agenda item looks at amendments under the FLSA for tip ownership & credits.

Request for Information (RFI) – the WHD is seeking comments on ways to improve Family and Medical Leave Act (FMLA) regulations to ensure workers are provided for and protected, yet do not overburden employers administratively.

The Employee Benefits Security Administration (EBSA) has the following on the agenda:

Definition of Employer Under §3(5) of ERISA: Association Retirement Plans and Other Multiple Employer Plans – efforts are being made to release a *final rule* on what entities are considered “employers” with the ability to jointly establish a pension benefit plan.

The Occupational Safety and Health Administration (OSHA) has the following on the agenda:

OSHA intends to issue a proposed rule on its position regarding anti-retaliation provisions. There has been confusion under §1904.35(b). This regulation does not ban post-incident drug testing or incident-based incentive programs.

The Equal Employment Opportunity Commission (EEOC) has the following on the agenda:

Amendments to Regulations under the Americans With Disabilities Act (ADA) – the EEOC is planning to amend regulations with regard to incentivizing employer-sponsored voluntary wellness programs under the ADA.

Amendments to Regulations Under the Genetic Information Nondiscrimination Act of 2008 (GINA) – the EEOC will be revising the wellness rules under GINA.

It appears that the DOL has a lot planned regarding new regulations. Be sure to stay tuned, as HRWS will provide information as it becomes available through future HR Clinics, HRWS Trending, or via the HRWS Portal.