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President demands DOL expand overtime, NFIB opposes rule

NFIB strongly opposes a new effort by the U.S. Department of Labor to expand the number of workers eligible for overtime pay. Timing for the initiative could not be worse, as it comes on top of other anti-business policies such as increased minimum wage proposals, rising healthcare costs, and a tidal wave of additional federal regulation.

Last month, President Obama announced that he was directing the DOL to develop and issue a regulation that would increase the number of workers eligible for overtime. Though details are not yet known, logic dictates that the new mandate will be costly and complicated for small businesses to comply with.

What will the regulation do?

- DOL will aim to raise the minimum weekly salary above which workers can be exempt from overtime. Currently, if an employee earns more than \$455 per week he or she can be exempt from overtime.
- It is likely the DOL will look to states like California and New York, which have raised this threshold at the state level to \$800 and \$600 respectively.
- In addition, the regulation is expected to require employers to calculate the percentage of "executive" work performed by employees, to determine which workers are exempt from overtime.

What are some other concerns?

- Labor costs are already high for small businesses – the cost of providing wages and benefits for employees has skyrocketed and will continue to increase under Obamacare.
- Like most government mandates on business, increasing the number of workers eligible for overtime will have a deep and disproportionate impact on the small-business sector.
- The vague detail offered by the administration on what the regulation will look like only increases uncertainty for small businesses, and makes them less likely to add new workers.

The timeframe for the rule is uncertain. At any point, the DOL may propose a rule. At that time, the public must be given time to comment on the proposal, likely for 60 days. Once the comment period closes, the DOL must consider all public comments before moving forward with a final rule.



NLRB resurrects ambush election rule

The National Labor Relations Board recently proposed – for the second time – its ambush elections rule. This rule would drastically shorten the time frame for a union election.

The rule would radically cut short an employer's opportunity to learn of and respond to union organizing by reducing the election timeframe from the current median of 38 days to as few as half that.

The shortened timeframe puts employers at a severe disadvantage since unions can prepare their entire unionization campaign in secret.

An accelerated election will not give employers adequate time to educate employees and prepare for an election. This means that employees will not have full information about the pros and cons of unionization.

NFIB was part of a legal challenge that resulted in the previous ambush election rule being tossed out by a federal judge. The NLRB did not have enough members at the time to issue a rule.

However, now that the NLRB has a full complement of members, it has re-issued the rule.

NFIB continues to strongly oppose the rule and will fight in Congress, with the NLRB, and if necessary, in court again to prevent this harmful rule from going forward.

NFIB asks State Dept. to find Keystone XL project in national interest



NFIB recently filed comments with the U.S. State Department arguing that it should determine that the Keystone XL project is in small business's interest – and America's.

The cost of energy remains one of the top concerns of small business owners, who rely on affordable energy to operate their businesses successfully. In the 2012 edition of *NFIB's Small Business Problems and Priorities*, "Cost of Natural Gas, Propane, Gasoline, Diesel, Fuel Oil" ranked as the third-most important priority among NFIB's members. Nearly 35 percent of respondents cited energy costs as a "critical" issue to their business.

And according to NFIB's *Energy Consumption* poll, energy costs are one of the top three business expenses in 35 percent of small businesses. Providing more affordable energy will directly help small businesses reduce the impact high energy prices have on their businesses.

Accordingly, NFIB believes it is in the nation's interest to approve construction of the Keystone XL pipeline connecting existing pipelines in Nebraska to plentiful crude oil resources in Canada and the northern United States. From there, this oil can be sent to refineries in the Gulf Coast for processing.

NFIB believes construction of this 875-mile portion of the pipeline is important for reducing America's reliance on foreign energy and helping to lower the cost of fuels small businesses use every day. In addition, the project has the potential to create thousands of jobs that will help create and support small businesses in communities where the jobs are created.

NFIB testifies against OSHA's silica rule

NFIB testified last month before the U.S. Occupational Safety and Health Administration to oppose the agency's proposed silica rule that will substantially impact small businesses in the construction and manufacturing industries, among others.

In his testimony, Dan Bosch, NFIB's manager of regulatory policy, argued that OSHA should withdraw the proposed rule because the agency has not explained why the current rule is not sufficient, it did not appropriately consider small business impacts, and its cost estimates were dramatically underestimated.

"Our membership fully understands the need to protect workers from any dangers presented by exposure to respirable silica," Bosch told OSHA officials on March 21. "However, they believe that this proposed rule is not the answer."

OSHA is proposing to reduce by half the permissible exposure limit (PEL) of respirable silica, which is prevalent in the construction and manufacturing industries where rock, sand and concrete are frequently processed and is fundamental to the work of these activities. In addition to lowering the PEL, OSHA will require expensive engineering controls, employer-paid medical monitoring of employees, unreliable and time-consuming testing of air quality and a hefty paperwork and recordkeeping burden. NFIB estimates new compliance costs to run about \$1,000-\$6,000 per year, depending on firm size and industry.

Other Regulations NFIB is Watching

OSHA: NFIB recently filed comments on a proposed rule from OSHA that would change its reporting system for occupational injuries and illnesses, requiring employers to submit data from its injury logs electronically to the agency. OSHA will then take the data and create a database – with establishment-specific information – that is available to the public. Our concerns include the public misinterpreting the safety of businesses; unions using the information to target certain businesses for unionization, and the burden of entering the information into OSHA's website.

EPA: NFIB will file comments next month with the EPA regarding its first major rule to regulate greenhouse gas emissions. NFIB is concerned that the rule, which would limit emissions from new power plants using coal and natural gas, will substantially affect the availability of affordable electricity for small businesses.