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The Big and Small Implications in Perez v. Mortgage Bankers Association

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There are two important takeaways from *Perez v. Mortgage Bankers Association*,[1] one with a broad scope and the other much narrower. The broader ruling exempts agency interpretations of laws and regulations from any notice and comment requirements under the Administrative Procedures Act ("APA"), allowing agencies to substantially alter interpretations without notice. On a different note, however, is the finding that Department of Labor ("DoL") Fair Labor Standards Act ("FLSA") classification interpretations are subject to change at any moment.

In 1999 and 2001, the DoL issued letters stating that mortgage-loan officers do not qualify for the overtime "administrative exemption" to the FLSA. The department promulgated new regulations in 2004, and in 2006 issued a new opinion that mortgage loan officers now DID qualify for the exemption. In 2010, though, the DoL withdrew the 2006 opinion and issued a new "Administrator Interpretations Letter," again stating that mortgage loan officers are not exempt from the overtime regulations under FLSA. The Mortgage Bankers Association sued enjoin in the 2010 interpretation, relying on the 1997 D.C. Circuit Court of Appeals decision of Paralyzed Veterans v. D.C. Arena,[2] in which the Court held that agencies making significant changes to interpretations of regulations must follow the APA's notice and comment procedures. In a unanimous decision, the Supreme Court held that Paralyzed Veteranswas decided wrongly, as it "improperly imposes on agencies an obligation beyond the 'maximum procedural requirements' specified in the APA."[3] The Court made the distinction between "legislative rules" that have the force and effect of law and "interpretative rules" that merely provide guidance as to how the agency views a law or regulation. This holding provides agencies with the ability to revise, amend and overrule their own interpretations without notice or public input. The larger effect of this holding is that, as political administrations change and policies shift, administrative interpretations can, and likely will, change as well.

With the holding of weightier import dispatched, the lesser ruling – of potentially great significance to Letters over the years, giving guidance as to how the various exemptions of the FLSA overtime rules apply. What this case makes clear, however, is that these interpretations are not set in stone and employers should watch DoL opinions with a wary eye for future changes. When in doubt, employers should err on the side of caution. DoL Opinion Letters should be scrutinized in light of Perez, comparing the opinion with modern applicable tests, regulations and interpretations.

Of additional interest in relation to the exemption classifications are the coming changes to FLSA overtime exemption rules. The DoL expected to propose new rules in February, but these proposals are still forthcoming. The new regulations are expected, however, to increase the exempt minimum salary amount significantly, as well as provide narrower classifications to the exemption categories (more on the proposed rules can be found here). These new rules may render a great many exemption classifications moot, as the department is widely expected to greatly limit the overtime exemptions available.

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[1] Perez v. Mortgage Bankers Association, No. 13-1041, 575 U.S. ___ (2015)

[2] Paralyzed Veterans of Am. v. D. C. Arena L. P., 117 F. 3d 579 (D.C. Cir. 1997)

[3] Perez at 7

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