



SCWA Legislative & Regulatory Update

June 17, 2024



S-Corp Modernization Introduced in House

Positive news in the area of S corporations. Ways and Means Member Brad Wenstrup (R-OH) has introduced the S Corporation Modernization Act of 2024 (H.R. 8614).

The introduction of this year's bill will help S-Corp move forward on a list of technical tax provisions important to the country's 5 million S corporations, including:

- Increasing their access to capital;
- Expanding the list of eligible shareholders to include more employees, non-resident aliens, and retirement accounts; and
- Eliminating rules that penalize S corporations compared to partnerships and other business forms.

The S corporation was created by Congress in 1958 and has grown in popularity over the years, particularly among small- and family-owned businesses, because of its simplicity and flexibility.

Today, S corporations are the most common form of business structure in America with more than 5 million. Despite their popularity, the rules governing S corporations can have the effect of restricting their ability to invest and create jobs, which is why the Wenstrup bill is so important.

Representative Wenstrup has been a long-time champion of our issues. In his statement introducing the bill, he made clear the importance of these reforms:

"S Corporations are the backbone of American business, located in every city and town across America, especially in rural areas like Southern Ohio. As Congress works to build upon the success of the Tax Cuts and Jobs Act, it's critical that S Corps aren't forgotten. The S Corporation Modernization Act contains important changes to the tax code that will make it easier for S Corps to operate and access capital so that they can grow, employ more Americans, and continue to invest in the communities in which they operate."

S Corporation Modernization has a long history of support from the business community, and its introduction means there is now have a sponsor sitting on the critical House Ways and Means Committee with six months of legislative session to go.

SCWA Joins Letter Requesting Overtime Rule Delay

Dear Administrator Looman:

We below request the Wage and Hour Division (WHD) stay the effective date of its overtime final rule published in the Federal Register on April 26, 2024, (89 FR 32842) to allow for judicial review, as the rule is currently being challenged in two federal courts. The U.S. Court of Appeals for the Fifth Circuit is considering the Department of Labor's (DOL) statutory authority to implement a minimum salary threshold related to the overtime pay requirements under the Fair Labor Standards Act, while a lawsuit filed on May 22, 2024, before the U.S. District Court for the Eastern District of Texas is challenging the legality of the substantial increase to the minimum salary threshold

included in the final rule as well as the rule's triennial automatic updates to the threshold.

SCWA is part of a coalition of diverse associations, businesses, and other stakeholders representing employers with millions of employees across the country in almost every industry. We believe that employees and employers alike are best served with a system that promotes maximum flexibility in structuring employee hours, career advancement opportunities for employees, and clarity for employers when classifying employees.

The Administrative Procedure Act permits agencies to “postpone the effective date of action taken by it, pending judicial review” when “justice so requires.” During President Biden’s term in office, several agencies have already exercised this authority while litigation was pending over their rules, including the Federal Trade Commission’s CARS Rule, the Securities and Exchange Commission’s Climate Disclosure Rule, and the National Labor Relations Board’s Joint Employer Final Rule.

Postponing the effective date of a rulemaking while litigation is pending ensures that impacted businesses and the agency itself do not waste valuable resources by attempting to come into compliance or implement a rule that could be invalidated by a court. For example, if the overtime rule is implemented, it will trigger significant costs for the employer community, but these costs can be avoided if a stay is granted by the Department of Labor and the courts eventually invalidate the rule.

Moreover, a stay of the overtime rule would also protect workers whose terms and conditions of employment may be negatively impacted by the policy changes within the rule. Many workers will be reclassified if the final rule goes into effect, resulting in them losing workplace status, access to benefits, flexible work arrangements, or career development opportunities. These changes should not be made lightly, as the resulting low employee morale and/or decrease in productivity cannot easily be recovered if the rule is eventually invalidated by the courts.

A delay would be a minor change for the Wage and Hour Division, while it could protect many businesses and workers from detrimental consequences. We urge WHD to stay the effective date while litigation is ongoing.

Sincerely,

SCWA and others professional business organizations



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