

### An Update on the U.S. Department of Labor's Agenda

Jennifer Brand, Associate Solicitor of Labor, spoke at the American Bar Association Federal Labor Standards Legislation Committee's Mid-Winter Meeting on February 26. Ms. Brand provided an update on important USDOL initiatives and activities. Ms. Brand discussed recent litigation involving interns and confirmed that the USDOL still believes the six factors outlined in its [Fact Sheet #71](#) is the proper test to determine whether an unpaid internship is lawful. Ms. Brand did acknowledge that as the workplace evolves, it may, in unusual situations, be appropriate to consider other factors.

Ms. Brand also discussed the USDOL's appeal of the U.S. District Court for the District of Columbia's [order](#) vacating two major provisions in the USDOL's Home Care Rule originally intended to be effective January 1, 2015. The new rule would have excluded third-party employers from relying on the companionship and live-in domestic worker exemptions and would have significantly narrowed the definition of companionship services. It is anticipated the case will be heard in the May term.

Finally, Ms. Brand acknowledged that the highly anticipated proposed changes to the white-collar exemptions would not be published this month as the USDOL had previously suggested. She further stated that they are "not imminent." Although she would not comment on specifics, she stated that the USDOL is examining the appropriate salary level test and whether the duties test needs to be revised. Practitioners believe that the proposals will include, among other things, raising the salary level test and narrowing the duties test of the exemptions to make it more difficult to classify employees as exempt. Some of the expected changes may include implementing a strict percentage of exempt and non-exempt duties and the possible elimination of the "concurrent" duties test whereby an employee may perform exempt and non-exempt duties at the same time.

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