
LEGALLY SPEAKING

by Bob Dunlevey



Now @ Taft Law
(937) 641-1743

THE REGULATORY SLOWDOWN

Can you Hear the Hush?

In the last year or so, has your business seen fewer regulations being foisted upon it? Are there fewer government agencies knocking at your doors these days? The answer is probably “yes” to both. It is almost as if a “hush” has come over the arena of federal agencies that played such a significant role in your day-to-day operations just a few years ago. The reasons for this are many.

Of course, the Trump Administration continues with its 2:1 “regulatory rollback initiative” to offset the more than 22,700 regulations of the Obama Administration which had an estimated cost of \$120 billion per year. But what is even more significant are the agency hiring freezes, reductions in governmental staffing primarily through attrition, and budget cutbacks. And, of course, federal regulatory agencies are simply becoming less aggressive than in the recent past. President Trump touts that –

- The Administration has cut 22 regulations for every new rule introduced – far exceeding his 2:1 initiative.
- Agencies and departments issued 67 deregulatory actions and imposed only three new rules in FY 2017.
- 1,579 planned regulatory actions have been withdrawn or delayed.

-
- Congress has used an obscure 1996 law – the Congressional Review Act – to rescind 14 regulations enacted late in the Obama Administration – a law used only once before.

The White House has approved less than 200 regulations since inauguration day compared to 510 promulgated in President Obama's first year. All of these actions by the Trump Administration have been done in response to the Federal Register of regulations which today has swollen to 185,000 pages from just 20,000 in 1960.

But, far more significant than the regulatory rollback is how the agencies have appeared to curtail their activities. Here are just a few examples:

- The Department of Labor Wage-Hour Division has not actively pursued the Obama Administration's overtime pay regulations which originally caused most employers to revisit the exemptions of their employees and caused much time to be spent dealing with the anticipated regulations which got put on hold by a federal court at the last moment.
- OSHA has delayed its new beryllium general safety standard until May 2018 and its ranks of field investigators known as compliance officers has been reduced through attrition by about 4%. One OSHA Area Director even purchased his own photocopy paper recently to keep things running.
- The Department of Transportation has pulled back a 2016 proposed regulation for heavy trucks to electronically limit speed – in addition, a dozen transportation safety rules under development or adopted have been repealed, withdrawn or delayed.

-
- The Office of Federal Contract Compliance is rolling back the Vietnam Era Veterans' Readjustment Assistance Act veterans hiring quotas from 6.7% to 6.4% for affirmative action plans.
 - The National Labor Relations Board is considering cutting in half the number of regional offices it has and decreasing the authority of its Regional Directors in making case decisions – the NLRB's budget has been shaved to the lowest level since 2009.
 - The Environmental Protection Agency is considering rolling back 67 environmental rules including clean air and water rules – the most recent being greenhouse gas emissions and fuel economy standards for automobiles – more than 700 employees have left the EPA in the last year.

While agency enforcement activities have declined, private attorneys representing claimants in civil court actions are filing more actions than ever before. And, the damages sought in these types of cases far exceed what most agencies would demand for resolution. Therefore, businesses must not get a false sense of security over this regulatory rollback – stay vigilant about compliance.

Of course, the “vote is still out” on this “deconstruction of the administrative state.” After all, the regulatory maze in Washington is hard to understand and evaluate. Moreover, midterm elections are coming and this could cause a possible Democrat majority which could rejuvenate regulatory initiatives. But for now, there appears to be a “hush” which has come over the arena of federal agencies – much appreciated by businesses battered by a barrage of regulations in recent years.

For further information, contact Bob Dunlevey at Taft/Law (937) 641-1743 or email rdunlevey@taftlaw.com.