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Employers: Get Ready For New Overtime Regulations

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Background: The Fair Labor Standards Act ("FLSA")

FLSA requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a work week.

The FLSA does provide an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, and professional employees (the "white collar" exemptions). Most employers consider some of its employees covered by one of these exemptions, treating them as salaried exempt employees for whom no additional compensation is required if they work beyond the 40-hour work week.

Exempt to Non-Exempt

With recently proposed changes to the FLSA regulations by the Department of Labor ("DOL"), many employees will lose this exemption and their employers will be required to pay them overtime. In fact, it is expected that if adopted, the revised rules would, according to DOL projections, bring nearly 4.7 million currently exempt employees within the scope of overtime protection.

Currently, to qualify for a "white collar" exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than $455 per week ($23,660 per year). In order for an exemption to apply, an employee's specific job duties and salary must meet all of the requirements of the DOL's regulations.

Earlier this year, President Obama directed the Secretary of Labor and the DOL to reform the current "white collar" exemptions to increase the number of persons entitled to overtime under the FLSA. In July, the DOL published a lengthy notice of proposed rulemaking updating the FLSA's overtime exemptions. The proposed rules would significantly increase the minimum salary threshold required to qualify for the FLSA's "white collar" exemptions for executive, administrative, and professional employees. At this moment, the proposed rules do not contain any changes to the "duties" tests.

Proposed Changes

A. The current salary threshold would be increased from $455 per week ($23,660 per year) to an amount equal to the 40th percentile of earnings for full-time salaried workers. This is projected to be $970 per week or $50,440 per year in 2016.

B. The DOL maintains a special exemption for highly compensated employees. The Department proposes increasing the salary level requirement for this exemption from the current threshold salary of $100,000 per year to an amount equal to the 90th percentile of earnings for full-time salaried workers. In 2013, this figure corresponded to a $122,148 annual salary.

C. The DOL proposes incorporating automatic annual updates to the salary level test to ensure the salary levels change consistently and gradually (rather than requiring newer regulations be issued in order to update the salary requirement).

In light of the foregoing, the proposed FLSA regulations will require higher minimum salaries for exempt employees, even those who are highly compensated. The DOL plans to rely on 2016 first quarter data to implement the changes. The finalized rules are expected to take effect in or near July, 2016.

Bottom Line

Employers need to begin reviewing the status of their employees who they have treated as being exempt, confirm that those employees meet one of the duties tests, and review the salary level that they compensate their exempt employees. It is imperative that every employer conduct this audit now and analyze the impact this will have on their workplace. It is likely that significant changes will have to be made.

Questions?

Contact Mark T. Wassell, shareholder in our Labor & Employment Group, or any of our Labor & Employment Attorneys.



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