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DEPARTMENT OF LABOR ISSUES “FAIR PAY” REGULATIONS REVISING WHITE COLLAR OVERTIME EXEMPTIONS



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Many employers either pay, or risk more than necessary, where overtime is concerned. In view of the details of the overtime law, this is not surprising.

The Federal Fair Labor Standards Act (the FLSA) requires that *most* employees receive overtime. This means that most employees must be compensated at "one and one-half times the regular rate" at which they are employed for hours worked in excess of 40 hours in a week. Companies that compensate their workforce on a salaried basis commonly rely on the “white collar” exemptions of the FLSA in order to avoid overtime pay requirements.

Recently, the Department of Labor (the DOL) announced new revisions to these “white collar” exemptions. Certain classifications of employees are exempt from receiving overtime under the FLSA. These exemptions are based on an employee’s particular responsibilities. Employees who meet certain duties and salary tests may fall under the categories of the “white collar” exemptions. These revisions mark the first time that salary requirements have been revised in 30 years.

SOME STRAIGHTFORWARD REFORMS INCLUDED

Under the new rules, workers earning less than

\$23,660 a year must be paid overtime as a matter of course. Workers with a salary in excess of \$100,000 a year are now excluded if they have at least one administrative or professional type of responsibility as part of their employment.

SOME GOOD NEWS FOR EMPLOYERS

The DOL’s revisions include two employer-friendly modifications to this rule. The first allows employers to impose unpaid disciplinary suspensions of one full day or more on exempt employees without compromising their exempt status.

The old rule allowed such deductions only for violations of safety rules of major importance. The new rule allows unpaid suspensions for violations of employers’ written policies, such as those outlawing sexual harassment or workplace violence, as long as they are applied uniformly to all workers.

DOL described this as a “common sense change that will permit employers to uniformly hold exempt employees to the same standards of conduct as [those] required of nonexempt, hourly workers.”

The second change opens wider the so-called “window of corrections” and creates a new “safe harbor” provision.

An employer that makes improper deductions from employees' pay can lose the exemption for an entire class of employees, a potentially very costly mistake. In certain circumstances, the window of corrections allows employers to maintain the exemption by reimbursing employees for improper deductions.

The new safe harbor clause gives employers additional protection. If the employer has a written policy that prohibits improper pay deductions, notifies employees of the policy and reimburses them for improper deductions, the employer would not lose the exemption for any employees unless the employer repeatedly and willfully violates its own policy.

The purpose of both the old and the new window of corrections, the DOL said, are to support the principle that the employer does not lose FLSA exemptions "because of isolated incidents of improper pay deduction." Thus becoming more forgiving for well-intentioned employers who make inadvertent errors.

SOME GOOD NEWS FOR EMPLOYEES

In addition to the advantages to employers, the new rules also contain provisions that are employee friendly. Because of the new distinctions between "white collar" and "blue collar" employees, the total number of employees capable of receiving overtime will increase. Though some employees may be reclassified as "white collar" under the rules, the overall trend is to greater inclusion.

AN UNEXPECTED PROBLEM

One hangup for the new regulations occurred that was totally unforeseen by the Department of Labor. It turns out that many employees took it as a matter of pride that they did not receive overtime pay. Some have reportedly felt demoted by receiving overtime pay under the new rules and feel that they are no longer on a managerial tract. It is unknown if these complaints will eventually lead to changes in the

regulations, but it is an interesting issue for employers to consider when defining business roles for their employees.

POSSIBLE LEGAL ISSUES FOR FUTURE

Like all new regulations, no matter how detailed, there is usually room for uncertainty, interpretation, and disagreement. Though, as noted above, there are certain definite and easy to apply rules, there are many more detail-oriented parts of the regulations that could open the door for litigation of some kind. Hopefully, however, any such problems will slowly work themselves out as the regulations are followed over time.

CONCLUSION

These are only highlights of the ways in which the final rule differs from the DOL's proposed revisions. As with many comprehensive reforms, they are a mixed bag of potential opportunities and complications for the workplace depending on individual circumstance. For more information regarding the impact of the revised rule on your workplace, please contact Denton & Keuler.

About the Author

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