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Seven Steps to Compliance With New Overtime Law

The wait continues for the Department of Labor's publication of its final rule revising the overtime provisions of the federal wage law. If the DOL has its way, however, employers will have only 60 days from publication of the final rule to comply. With a compliance deadline potentially as early as July, employers need to fully prepare now for significant changes in the law.

While the final rule has not yet been published, it is anticipated that the federal overtime law will change as follows:

- Employees earning less than \$970 per week (\$50,440) per year will be entitled to payment for all overtime hours worked absent certain limited exceptions for positions such as teaching professionals, practitioners of law or medicine, or — depending on their compensation structure — computer professionals and outside sales employees. While it has been predicted that the final rule may impose a slightly lower minimum threshold, the actual figure will not be known until publication of the final rule. The earning threshold under the law also may be subject to an automatic annual increase. It is not anticipated that the new rule will materially change the overtime exemptions' duties tests.
- To maintain an exemption from overtime as a "highly compensated" employee, salary in 2016 must be \$122,148 (up from \$100,000).
- It is not yet clear whether nondiscretionary bonuses may be included in the above minimum salary calculations.

In preparation for the upcoming change, employers should implement the following seven-step procedure to identify and address potential overtime compliance issues under the new law. By generating a list of affected positions and addressing issues by process of elimination, employers will forge a clear path to compliance.

Step One:

Generate a list of all positions with a base salary ranging from \$23,660 (\$455 per week) and \$50,440 per year (\$970 per week), as well as all positions with an annual base salary between \$100,000 and \$125,000.

Step Two:

Strike any position from the list that is already eligible for overtime under current federal or state law or company payment practices.

Step Three:

Strike any position from the list not subject to the salary basis requirement under federal law, such as certain teaching professionals and practitioners of law or medicine.

Step Four:

Review any remaining positions with a salary close to the new proposed \$50,440 per year (\$970 per week) or \$122,148 per year minimum thresholds. If finances allow increasing salary for the position to the new minimum threshold, recognizing that the minimum may increase each year under the law, strike the position from the list.

Step Five:

From the remaining positions on the list, identify any position for which business needs require an average workweek in excess of 40 hours (or in excess of the overtime hours requirement under state law). For those positions, determine whether to (a) convert to hourly rate and absorb the costs of overtime, (b) restructure the position to reduce the need for overtime or (c) increase the salary to meet the new salary of minimum of \$50,440 or \$122,148. Seasonal fluctuations in hours also should be considered to the extent temporary or part-time hires may be utilized to reduce the need for overtime work. For any

position where overtime hours are not anticipated, plan to convert compensation to an hourly rate and limit overtime work as appropriate.

Step Six:

Plan employee communication strategies. Employees converted to overtime eligible status often resist the typical time-tracking and work-hour constraints associated with overtime-eligible positions. Plan to train converted employees and managers regarding procedures for seeking pre-approval of overtime, reporting all hours worked, and limiting the need for overtime work.

Step Seven:

Know you are prepared and await publication of the final rule before implementing the plan (in the event the final rule differs from the proposed rule).

With a proposed compliance window of only 60 days from publication of the final rule, employers should take steps now to prepare for the upcoming changes in the overtime law. Appropriate management, human resources, finance and legal personnel should be consulted to minimize the financial impact to the company and the risk of future noncompliance.

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