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Department of Labor Issues New Overtime Rules

Legal Update

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On May 18, 2016, the Department of Labor issued the long-awaited new regulations which provide widespread and significant changes affecting all businesses and employees covered by the federal Fair Labor Standards Act. The regulations are effective December 1, 2016.

The Department of Labor has indicated that the regulations will raise wages by an estimated \$12 billion over a 10 year period, and will extend overtime eligibility and protection to 4.2 million additional workers not currently eligible for overtime pay under federal law. The changes are expected to have particular impact on women, who reportedly represent 56 percent of the 4.2 million workers affected by the new regulations.

Key Changes to Overtime Regulations

A number of the major changes are highlighted below. These changes apply to all businesses and individuals covered by the Fair Labor Standards Act.

Minimum Salary Threshold for Exempt Status

The final regulations do not make any changes to the duties test for the executive, administrative and professional employee exemptions. However the minimum salary threshold (and salary or fee threshold for the computer employee exemption) for exempt status has been **raised from a gross of \$23,660 to \$47,476 a year, or from \$455 to \$913 a week. The minimum salary threshold will be automatically updated every three years** to ensure that the threshold is maintained at the 40th percentile of full-time salaried workers in the lowest income region of the country. Based on projections of wage growth, the threshold is expected to rise to more than \$51,000 with the first update on January 1, 2020.

Highly Compensated Employee Exemption

The regulations raise the threshold for the **“highly compensated employee” exemption from \$100,000 to \$134,004.**

Counting Bonuses and Incentive Payments Toward the Salary Threshold

The new regulations will allow employers, for the first time, to count nondiscretionary bonuses and incentive payments (including commissions) toward up to 10 percent of the new salary level.

For employers to credit nondiscretionary bonuses and incentive payments toward a portion of the salary level test, such payments must be paid on a quarterly or more frequent basis.

Employers with exempt employees who are paid a salary that falls short of the new salary threshold will effectively have two choices as of December 1, 2016: (1) increase the employees' salaries to comply with the new threshold; or (2) start paying overtime on an hourly basis for affected employees who work more than 40 hours a week.

Action Items

The Department of Labor will release three technical guidance documents, designed to help private employers, non-profit employers, and institutions of higher education come into compliance with the new rule. In the meantime, employers may wish to consider the following actions:

- Perform a preliminary audit to identify employees affected by the new regulations;
- Develop an action plan for any affected employees to ensure compliance; and
- Develop a communication plan for responding to employee questions, concerns, and/or demands following these widely reported and publicized changes.

The new regulations also may present an opportunity to conduct a broader wage and hour audit to determine compliance with unchanged aspects of the Fair Labor Standards Act.

Please contact any Fredrikson & Byron Employment & Labor attorney with questions or for assistance in this process.