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Debra J. Linder

**Employment and Benefits Update****Legal Update**

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By Mary M. Krakow &amp; Debra J. Linder

Banks and other employers may need to update their policies, practices and agreements due to recently enacted employment and benefits requirements, including the following:

**NEW FEDERAL SALARY REQUIREMENTS**

Per the federal Department of Labor's new salary requirements, effective December 1, 2016, all white collar "exempt" employees covered by the federal Fair Labor Standards Act must receive a weekly salary of no less than \$913, the equivalent of \$46,476 annually. This is an increase from the current required weekly salary of \$455, or \$23,660 annually. The most common "white collar" employees include those who meet the definitions of executive, administrative, or professional employees, and highly skilled computer employees.

If an employer decides to move an employee who is currently "exempt" to "non-exempt" status, the employer must track the hours that the employee works and must pay overtime for hours over 40 per workweek, the same as with any other non-exempt employee. For those employees moved to non-exempt status, the employer would also need to assess whether the move to non-exempt status affects the employee's hours for determining (i) health plan eligibility under the Affordable Care Act, (ii) service for eligibility, vesting and allocation purposes under a 401(k) or other qualified retirement plan, and (iii) eligibility for other benefit programs.

Use the time between now and December 1st to identify employees affected by the new regulations, develop a plan to ensure compliance, and determine whether to conduct a broader wage and hour audit.

**EXPANDED ENFORCEMENT OF NON-DISCRIMINATION REQUIREMENTS**

The federal Equal Employment Opportunity Commission (EEOC), which enforces Title VII of the Civil Rights Act of 1964, has held that the law's prohibition of sex discrimination in the workplace includes discrimination based on gender identity or

sexual orientation. These federal protections apply regardless of any contrary state or local laws. For example, the EEOC holds that denying an employee equal access to a common restroom corresponding to the employee's gender identity is sex discrimination and employers cannot condition this right on an employee undergoing or providing proof of surgery or any other medical procedure. Additionally, employers cannot restrict a transgender employee to a single-user restroom, though employers may make restrooms available to all employees who may choose to use them.

Ensure that your equal employment and anti-harassment policies and practices comply with the EEOC's prohibitions.

## NEW FEDERAL DEFEND TRADE SECRETS ACT (DTSA)

The DTSA, which became law in May 2016, creates a new federal cause of action for misappropriation of trade secrets. To recover exemplary damages and attorneys' fees under the DTSA, a written notice of the statute's protection for whistleblowers must be included in any agreement governing the use of trade secrets or confidential information.

Consider updating agreements containing confidentiality and nondisclosure provisions to include the statutory notice.

## OSHA STRENGTHENS THE ANTI- RETALIATION PROVISIONS

The federal Occupational Safety and Health Administration's (OSHA's) amended rule that became effective August 10, 2016, among other requirements, clarifies and strengthens OSHA's existing rule prohibiting employers from retaliating against employees for reporting work-related injuries or illnesses. OSHA specifically has identified disciplinary policies, post-accident drug testing policies, and employee incentive programs as being of particular concern under the amended rule.

Review your policies and programs to ensure they do not include provisions that would deter a reasonable employee from reporting a work-related injury or illness.