On May 18, 2016, the Department of Labor (DOL) released its Final Rule and revisions to the Fair Labor Standards Act (FLSA) to update overtime regulations. These updated regulations will impact 84,000 workers in Massachusetts—about 4.2 million workers nationwide—so it is important to understand their impact.

What is overtime?

With some limited exceptions, the FLSA requires certain employees who work more than 40 hours in a work week to earn overtime pay at a rate of 1.5 times their regular pay.

What are the new changes to the overtime law?

Under the current rule, white collar, salaried workers who earn less than $455 per week (or $23,660 annually) are eligible for overtime pay, subject to limited exceptions. The new rule will more than double this limit to $913 per week (or $47,476 annually), rendering many more employees eligible for overtime pay. Additionally, the revised regulations will require that, beginning in January 2020, these salary thresholds be increased every three years to keep up with inflation and changes in the economy and wages nationwide.

Workers who are not white collar, salaried workers may also be subject to the “highly compensated employee” (HCE) exemption. This means that workers who make above a certain amount are not eligible for overtime, even if they are paid on an hourly basis. Currently, the HCE exemption is set at $100,000 annually, but the Final Rule would increase this amount to $134,004 annually.

Lastly, the new revisions to FLSA will also allow employers to calculate up to 10% of an employee’s salary level for the purpose of these overtime thresholds from non-discretionary bonuses, incentive payments, and commissions. For example, an employee who earns $47,000 per year, but earns a $10,000 bonus would not be eligible for overtime pay under the new regulations because the employer can include $1,000 (10% of the bonus amount) in overtime calculations, putting said employee over the FLSA threshold.
How will this new rule affect me?

In order for workers to qualify for these overtime protections, the employee generally must:

1. Be salaried, meaning they are paid a fixed amount that cannot be altered based on the quality or quantity of work performed (the “salary basis test”)
2. Be paid less than the weekly salary level, which will increase to $913 per week ($47,476 annually) under this Final Rule (the “salary level test”)
3. Mainly perform executive, administrative, or professional duties as defined by Department of Labor regulation at 29 CFR part 541 (the “duties test”)

Some workers who are not salaried and were previously subject to the HCE exemption may now be eligible for overtime under the higher HCE limit of $134,004.

When will these new rules go into effect?

The FLSA revisions go into effect on December 1, 2016. If you have questions as an employer about the implementation of these rules or questions as an employee about your compensation, please contact our office at 617-556-0244.

Other News

On May 11, 2016, President Obama signed the Defending Trade Secrets Act (DTSA) into law, which provides a federal right of action for trade secret violations. Prior to enactment of the DTSA, any claims for misappropriation of trade secrets were governed by state law. As a result, the new DTSA will be a powerful tool for employers seeking to protect their intellectual property interests in federal court. Additionally, the DTSA includes the following provisions:

1. Employers claiming a trade secret violation can, without prior notice to the alleged wrongdoer, obtain a court order directing federal marshals to seize said trade secrets
2. Authorization for injunctions, attorney’s fees, and, in some situations, triple damages
3. Immunity to employee who disclose trade secrets to law enforcement in relation to illegal behavior
4. Requirement for whistleblower protections in certain employer confidentiality agreements such as employment agreements, non-compete agreements, and consulting agreements—failure to do so may result in losing rights to punitive damages or attorney’s fees in the event of a violation

The DTSA is effective as of May 11, 2016, so employers should carefully review any confidentiality agreements to ensure that they include this whistleblower notice to employees. As always, please feel free to call or email any member of the Shaevel & Krems, LLP Labor and Employment Team with any questions.
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