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COUNSELLORS AT LAW

EMPLOYMENT LAW ALERT

NEW MINIMUM SALARY LEVELS FOR EXEMPT EMPLOYEES **EFFECTIVE JANUARY 1, 2020**

The United States Department of Labor recently published amended regulations which increase the minimum salary levels required for certain “white collar” exemptions under the Federal Fair Labor Standards Act (the “FLSA”). The amended regulations are scheduled to go into effect on January 1, 2020.

The FLSA is the federal law requiring overtime pay for employees who work more than forty hours in a given workweek. There are certain, limited exemptions to the overtime pay requirements, which are often referred to as the “white collar” exemptions. Each white-collar exemption has a number of criteria that must be met in order to properly characterize a position as exempt, including that the job duties meet certain definitions and that the employee be paid a specified minimum amount, usually on a salary basis.

The amended regulations increase the minimum compensation levels for these “white collar” exemptions effective January 1, 2020 (but do not change the other criteria, including the job duties criteria):

- In order for a position to be properly characterized as exempt under the executive, administrative, or professional exemption, the employee in the position will need to be paid on a salary¹ basis in an amount no less than \$684 per week, which translates to \$35,568 per year (the current requirement is \$455 per week/\$23,660 per year).
- In order to be properly characterized as exempt under the computer exemption, the employee in the position will need to be paid on either a salary basis in an amount no less than \$684 per week, or an hourly basis in an amount no less than \$27.63 per hour.
- Employers may consider nondiscretionary bonuses and incentive payments received by the employee towards the annual standard salary level for the executive, administrative, professional, and computer exemptions, in an amount up to 10% of the standard salary level (*i.e.*, up to \$3,556 per year). Moreover, if an employee’s total annual compensation is less than \$35,568, the employer can make a payment at the end of the year, in an amount

¹ The administrative and professional exemptions also allow payment on a fee basis which equates to no less than \$455 per week.

up to 10% of the standard salary level (again, up to \$3,556 per year), referred to as a “catch up” payment, so that the employee earns at least \$35,568 for that year (the payment must be made within one month after the end of the year).

- In order for a position to be properly characterized as exempt under the highly-compensated employee exemption, the employee in the position will need to be paid a total annual compensation of at least \$107,432, and that total compensation must include at least \$684 per week paid on a salary or fee basis (the current requirement is \$100,000 per year).
- In calculating the total annual compensation to a highly compensated employee, the employer may include commissions, nondiscretionary bonuses, and other nondiscretionary compensation paid to the employee. If an employee’s total annual compensation is less than \$107,432, the employer can make a payment at the end of the year (a “catch up” payment) so that the employee earns at least \$107,432 for that year (the payment must be made within one month after the end of the year).

As many of you may recall, in 2016, the Department of Labor had published regulations which would have increased the minimum compensation levels under the white-collar exemptions to levels higher than the ones described above. However, an employer group challenged those regulations and a federal court in Texas issued rulings which prevented those regulations from becoming effective. It is possible that a legal challenge could be filed with respect to these new regulations. However, employers must begin to plan and prepare to implement the requirements of the new regulations effective January 1, 2020. We will keep you posted as to any legal challenges to these new regulations.

Also, please keep in mind that many states have their own laws with overtime pay requirements and exemptions to those requirements, which are not always the same as the federal requirements and exemptions. Employers need to be mindful of and in compliance with both federal and state law.

Please feel free to contact us if you have any questions regarding this or any other employment law issue.