BURKE, WARREN, MACKAY & SERRITELLA, P.C.

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LABOR & EMPLOYMENT

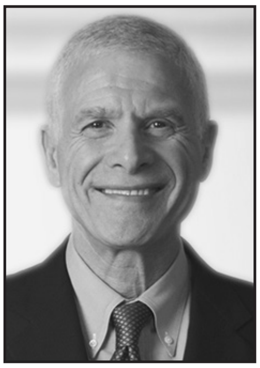
5 PRACTICAL STEPS TO COMPLIANCE WITH THE NEW OVERTIME RULES

Begin planning now for December 2016 roll-out

As you know, the Federal Fair Labor Standards Act (FLSA) sets the overtime pay requirements for most employees. The FLSA requires that employees classified as "non-exempt" be paid overtime for hours worked over 40 in any work week. In most cases, to be classified as "exempt" from the FLSA overtime pay requirement, an employee must: (1) be paid on a salary basis; (2) have executive, administrative, or professional job duties; and (3) be paid more than the minimum salary level set by the government.[1]

We have all been deluged with publicity concerning new FSLA regulations that apply to the determination of whether or not an employee is "exempt" from overtime pay requirements. To be "exempt", the new regulations still require that an employee be paid on a salary basis and have executive, administrative, or

Rachel E. Yarch



Ken Richman

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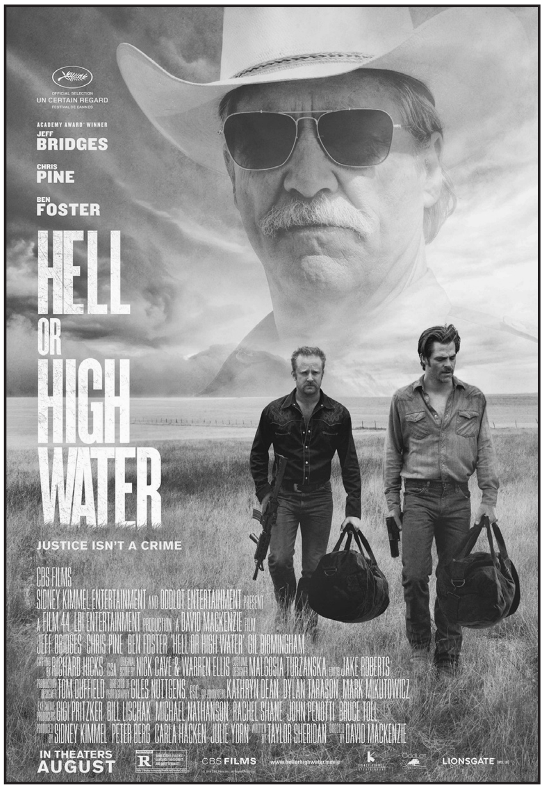

Hell or High Water Receives Critical Acclaim

Burke, Warren, MacKay & Serritella congratulates OddLot Entertainment on the

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FIRM SELECTED 2016 PRO BONO LAW FIRM OF THE YEAR

Burke, Warren, MacKay & Serritella was selected to receive the Metropolitan Family Services Legal Aid Society's Scott Solberg Pro Bono Law Firm of the Year Award for its work in support of the organization.

The Legal Aid Society provides legal support to vulnerable citizens including low income, the elderly, and victims of domestic violence. Founded in 1886, The Legal Aid Society is one of the first organizations in the US to provide legal services to citizens in need. The organization's mission is to provide "justice for all."

The Scott Solberg Pro Bono Law Firm Award honors law

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NEXT ISSUE: Amendments to the IL LLC Act, Shareholder Wars, Yearend Tax and Estate Planning and more.

INTERNAL INVESTIGATIONS

Call your lawyer first

What You Need To Know About Internal Investigations

You get an unexpected visitor — an investigator with his/her team from a government agency. They are seeking information in connection with a matter and reaching out to you because you have done business with or are somehow connected to the target of an investigation. You may be in a position to offer meaningful background information that can help their case. You are not the target of the investigation, so they say. Should you be concerned?

According to Joe Roddy, head of the Firm's Internal Investigations practice, "Call your lawyer first!" Important people took the time to drop by your office, why disappoint them? According to Roddy, you most likely will not be the target of an investigation, but why take the risk? "It is appropriate and in no way does it show a lack of cooperation to cut the conversation short and inform your visitors that you would like to contact your lawyer before answering any questions."

Internal investigations can pop up unexpectedly — literally on your doorstep

Increasingly, government agencies — municipal, state and federal — have beefed up their investigative units. Many now have people with the title "inspector general" as part of the enforcement arm of their respective agencies. They often make unannounced visits to organizations and individuals as they gather evidence in connection with an investigation.

Between getting caught off guard and being fearful of doing something wrong, it can be hard to resist the temptation to answer every question on the spot. In the meantime, provide your contact information and indicate your intention to cooperate. You will get back to them after speaking to your lawyer.

Joe Roddy

Burke, Warren's Internal Investigations practice has conducted various investigations and has successfully assisted clients in enacting protective measures such as establishing policies to prevent employee misconduct, designing and implementing corporate compliance procedures and providing employee training and audit programs.

Joe Roddy began his career in the Cook County State's Attorney's office where he prosecuted numerous jury trials and oversaw different types of criminal investigations. In private practice, Joe has coordinated and conducted internal investigations for Fortune 500 companies, closely-held companies and local municipalities. For more information, please contact Joe Roddy at 312/840-7033 or jroddy@burkelaw.com.

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Firm Attorneys Attend @givesahoot

(from left) Rachel Yarch, Danielle Gould, Aaron Stanton, Duncan Keith of the Chicago Blackhawks, Brad Ader, Steve Schuster and Dana White at the @givesahoot Country Jam held at Morgan MFG in the West Loop on October 5. The event was sponsored by Keith Relief, founded in 2011 by Duncan Keith, and @gives back, charity arm of Firm client @properties, to support the efforts of both organizations to make a difference for Chicagoland families with medical burdens.

Firm Welcomes Newest Associates

Burke, Warren, MacKay & Serritella welcomes associates Helen Hapner and Tim Dondanville.

Helen Hapner is an associate in the Firm's Litigation group. She was a summer associate at the Firm during the summer of 2015 and served as a legal intern for the United States Department of Justice in the Executive Office for Immigration Review in the summer of 2014.

Helen Hapner

Helen earned her B.A., *summa cum laude*, in political science and Spanish literature from Knox College in 2011 and her J.D., *magna cum laude,* from the University of Illinois College of Law in 2016. She was a member of the NCAA Women's Cross Country Team at Knox College and a captain of the team her senior year. During law school, Helen served as an articles editor for *The Elder Law Journal* and a teaching assistant for *Tort Law*. Ms. Hapner can be reached at 312/843-5823 or hhapner@burkelaw.com.

Tim Dondanville is an associate in the Firm's Corporate and Real Estate groups. He was a summer associate at the Firm during the summer of 2015 and served as a judicial extern at the United States District Court for the Central District of Illinois during the summer of 2014.

Tim earned an A.B. in history from Princeton University in 2013, where he was also a member of the university's football team. He earned his J.D. from the University of Notre Dame Law School in 2016. During law school, Tim served as an articles editor for the Notre Dame *Journal of Law, Ethics, and Public Policy* and was President of the Student Bar Association. Mr. Dondanville can be contacted at 312/843-5824 or tdondanville@burkelaw.com.

Tim Dondanville

PRO BONO

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firms, corporations, and attorneys who display a strong commitment to the fundamental principles of equal protection and equal justice in the community through outstanding pro bono service. The Firm was recognized for the award at the Metropolitan Family Services Legal Aid Luncheon on October 26 at the Standard Club in Chicago.

Thank you to Alex Marks, Shana Shifrin, Pat Carlson, Tiffany Sorge Smith, Eric VanderPloeg, Adam Rick and Madeleine Milan for their continued support and dedication to both the Legal Aid Society and the Firm's Pro Bono practice.

"This recognition is a great honor for Burke, Warren," says Alex Marks, chair of the Firm's Pro Bono committee. "It's an indication of our strong commitment to support the work of a tremendous organization like the Legal Aid Society, as well as our Firm-wide commitment to pro bono efforts."

For more information about the Firm's pro bono program, please contact Alex Marks at 312/840-7022 or amarks@burkelaw.com.

Burke, Warren's Alex Marks on right with Bryan Johnson from The Legal Aid Society of Metropolitan Family Services

Long Term Attorney-Client Collaboration Leads To Legacy Planning

A lawyer's work with a client can be as short as a single project; once completed the attorney and client go their separate ways. With a little luck, an initial project can be followed by another. Every once in a while, when the circumstances and chemistry are right, an initial project can mark the beginning of an attorney-client collaboration that can last for decades.

As a result of one such relationship, the Firm's Dick Burke's work with a client culminated in the establishment of a charitable trust that, among other things, will continue to have a profound impact on the lives of dozens of Chicago high school students and their families for years to come.

Richard Burke

Throughout his life, the client (who will not be mentioned by name) poured his energy and creativity into his various business interests. He first met Burke as a shareholder in a manufacturing firm that he represented. As time passed, the client acquired complete ownership of the firm and as such had frequent contact with Burke as the company's attorney.

Having advised the client on many aspects of his business, from structuring an active board of directors, to employment and customer contract issues and finally to real estate leasing, Burke came to understand the client's personal values and priorities.

"My client was an entrepreneur and he achieved a great deal of success," said Burke. "As he approached retirement age with no heirs, we saw challenges and opportunities." It became clear that the business would need to be sold, which the Firm later handled after the client's death.

Having advised the client on many aspects of his business, from structuring an active board of directors, to employment and customer contract issues and finally to real estate leasing, Burke came to understand the client's personal values and priorities.

"As he aged, our conversations shifted from day to day business to what kind of mark he wanted to leave behind," said Burke. The attorney listened to his client and helped him clarify what meant most to him beyond his business career.

They determined that supporting a sustainable and green urban environment was important, as was supporting aquatic life. Trusts were established to fund long term projects in cooperation with research institutions as well as for a scholarship fund designed to help burgeoning entrepreneurs at Princeton University, his alma mater.

Burke recalls that the client was receptive to a wide range of giving to educational and social service entities. The two were collaborating once again but this time it was to help give money away instead of make it. They hatched a plan to create and launch a charitable trust that would address his charitable desires.

The resulting trust works with Holy Trinity High School, De LaSalle Institute, Mother McCauley Liberal Arts High School, Trinity High School and St. Patrick High School offering twelve new four year scholarships to students who are academically successful and motivated to go to college. For each of these students, the Trust pays for half of the high school tuition including resources to get them into college, such as ACT tutors for juniors and seniors.

This not only helps students get into colleges, but also can lead to college scholarships. Paying for half of the high school tuition helps ensure that parents also have an incentive to keep students on track.

"More people with skin in the game means there are more people rooting for these scholars to succeed and thrive," said Burke. Representatives from the Trust check in with mentors from these schools who regularly meet with each student to make sure they are staying on track, getting good grades, staying out of trouble, etc.

Along with Holy Family Scholars, another scholarship program which supports high school students in a variety of high schools in the Chicago area, the Trust is assisting a total of 60 students from middle and lower income families, providing quality high school education for their children working towards college. "The ideal outcome for the scholars goes far beyond just getting into college, but also impacting their own lives as well as the lives of their families and communities," said Burke.

For more information, please contact Dick Burke at rburke@burkelaw.com or 312/840-7001.

5 PRACTICAL STEPS
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professional job duties. But as of December 1, 2016, the new regulations require that, to be "exempt", the employee's annual salary must be at least $47,476 ($913/week) (up from $23,666, or $455/week, under existing regulations).[2]

The new regulations will result in millions of salaried workers becoming hourly employees entitled to overtime. Here are 5 practical steps you can take between now and December 1, 2016 to prepare for the new rules:

Step 1: Identify your "Target Group" — that is, salaried employees (other than outside salespeople) earning less than $913/week.

Step 2: Review the actual on-duty work time of each member of the Target Group over the past 90 days.

Step 3: Analyze the results of the time monitoring to determine whether or not your payroll expense will go up, down, or remain essentially the same if your Target Group members become "non-exempt" employees under the new rules. For this analysis, remember that (i) federal overtime rules require payment of time and one half for hours worked (versus hours paid) over 40 in a work week; and (ii) special rules apply for payment for hours while traveling, "on duty," working "split shifts," and other special circumstances.

Step 4: If your analysis concludes that your payroll will substantially increase as a result of the new rules, consider the viability of salary increases to maintain "exempt" status of all or a portion of the Target Group.

Step 5: If your analysis determines that the new regulations will increase your payroll in a meaningful way, consider changes to keep payroll costs in line. Among other things:

Review your policies on authorization for overtime, payment of overtime, travel for non-exempt workers, paid lunch and break times, log-in and log-out procedures, etc. so that your liability for overtime is appropriately limited to the extent the law permits — and amend your employee handbook accordingly.

Consider part time workers, contract labor, and outsourced functions to reduce your reliance on overtime work.

Educate your managers on appropriate administrative controls on the use of overtime.

For more information, please contact Kenneth H. Richman at 312/840-7002 or krichman@burkelaw.com or Rachel E. Yarch at 312/840-7029 or ryarch@burkelaw.com.

[1] There are some jobs that are always "exempt" even when they don't meet these requirements. A good example is outside salespeople (as distinguished from inside sales and sales service employees).

[2] The new regulations also modify the special rule for "highly compensated" workers, permitting employers to treat employees earning $134,004 or more (increased from $100,000) as "exempt" even if they don't perform executive, administrative or professional job duties.

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Firm's Race Judicata Team

Firm team members pictured include (from left) Eric VanderPloeg, Jim Murphy, Josh Cauhorn, Helen Hapner, Niani Scott, Ben Wieck, Kara Bufalino, Julie Mallen, Mary McWilliams, Liz Pall, Ricki Alva, Nora Flaherty, Tiffany Meier, Anna Kardaras, Alex Vozza, Shana Keith, Juanita Sullivan, Krista Smith, Lila McCabe, Rachel Wanroy, Nick Gowen, Liz Davis, John Stephens, Leah McCluskey (Archdiocese of Chicago), and Pat Carlson. Firm team member not pictured: Adam Rick.

EMPLOYEE BENEFITS

Paid Sick Leave Ordinance Expanded to All of Cook County

Effective July 1, 2017, up to 900,000 employees in Chicago and Cook County will be eligible for paid sick leave.

On October 5, 2016, the Cook County Board of Commissioners enacted the "Earned Sick Leave Ordinance," which is substantially the same as the Chicago Ordinance passed earlier this year. Both Ordinances require employers who have one employee who works at least 80 hours in any 120-day period and maintain a business facility within Cook County to provide at least one hour of paid sick leave for every 40 hours worked, up to a maximum of 40 hours per 12-month period.

Employers in Chicago and Cook County should review and update their sick leave policies in preparation for the July 1, 2017 deadline. Taking prompt action prior to the deadline is very important given that the Ordinances put many new burdens on employers, including notice of the new sick leave benefits and when and how the leave can be used.

Because the ordinances provide for damages of three times the amount of any unpaid sick time as well as costs and

Rachel E. Yarch

Alex Marks

attorneys' fees, the plaintiffs' bar will be actively looking for violators, particularly employers with numerous employees, which will further subject the employers to potential class action lawsuits.

To avoid future lawsuits, employers should prepare now, including reviewing sick leave or paid time off policies, ensuring mechanisms are in place to track employee leave accrued and used, and updating employee handbooks.

For more information about the Ordinances, please contact Rachel E. Yarch at 312/840-7029, ryarch@burkelaw.com or Alex Marks at 312/840-7022, amarks@burkelaw.com.

REAL ESTATE

Real Estate Group Hosts 2nd Annual Architecture Tour

(Pictured above, from left) The Firm's Josh Cauhorn, Brad Ader, Mary McWilliams, Doug Wambach, Elizabeth Davis and Joe von Meier admire the Sullivan Center (f/k/a Carson Pirie Scott Building) on the corner of Madison and State Street on the Firm's 2nd Annual Chicago Architecture Tour led by Doug Wambach. On August 2, he took a group from the Firm around the city to admire some of Chicago's gorgeous landmarks. Not pictured in the photo are Cathy McNamara, Mark Stern, Jessica Cox, Jim Murphy, Neil Berger, Blake Roter, and Jeff Warren.

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Firm Hosts University of Illinois Law School Dean

The Firm was honored to host a meet and greet with Vikram Amar, Dean of the University of Illinois Law School, on Friday, August 26. The Firm has many University of Illinois Law School alum and it values the ongoing relationship with the school. Dean Amar, a widely known constitutional law expert, became the Dean and Iwan Foundation Professor of Law at the University of Illinois in August of 2015. Prior to his position at the University of Illinois, Amar was the senior associate dean for academic affairs and a professor of law at the University of California, Davis School of Law. In attendance (pictured above, from left) were Alex Marks, Ben Wieck, Steven Meinertzhagen, Dean Vikram Amar, Adam Jung, Patrick Bruks and Aaron Stanton.

TAX LAW

TAX ALERT: IRS Proposes to Eliminate Valuation Discounts for the Transfer of Interests in Family Owned Entities

On August 2, 2016, the IRS issued proposed regulations under Section 2704 of the Internal Revenue Code. The regulations address the valuation of interests in family owned partnerships, limited liability companies and corporations for Federal gift, estate and generation-skipping transfer (GST) tax purposes.

If finalized, the regulations would significantly reduce, and possibly eliminate, certain discounts that are typically taken when valuing interests in family owned entities for gift, estate and GST tax purposes, including discounts for lack of marketability and minority interest. In short, the regulations would make it more difficult for a taxpayer to transfer such interests to other family members free of transfer taxes.

If you are in the process of transferring interests in a family owned entity to, or in trust for the benefit of, another family member, or if you are contemplating doing so, we recommend completing such transfer as soon as possible.

The regulations will, in general, apply to transfers of interests in family owned entities occurring on or after the date the regulations are published as final regulations. A public hearing is scheduled for December 1, 2016, and we anticipate the commentary that will be provided at such hearing will be critical of the regulations and may result in changes. Nonetheless, we are proceeding under the assumption that the regulations will be published as final regulations sometime in 2017.

If you are in the process of transferring interests in a family owned entity to, or in trust for the benefit of, another family member, or if you are contemplating doing so, we recommend completing such transfer as soon as possible.

If you would like to obtain more information regarding the proposed regulations, please contact Martin P. Ryan at 312/840-7060 or mryan@burkelaw.com or your Wealth & Succession Planning attorney at Burke, Warren at 312/840-7000 or www.burkelaw.com.

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The Bulletin is written by the firm of Burke, Warren, MacKay & Serritella, P.C. to keep clients and friends current on developments in the law and the firm that might affect their business or personal lives. This publication is intended as a general discussion and should not be construed as legal advice or legal opinion on any specific facts or circumstances. It is meant as general information only. Consult an attorney with any specific questions. This is a promotional publication. ©2016 Editor: Cy H. Griffith, Director of Marketing.

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HELL OR HIGH WATER

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success of its new release, *Hell or High Water*. The movie opened in theaters in August and stars Jeff Bridges, Chris Pine and Ben Foster. *Hell or High Water* is an American heist crime film centered around a divorced dad and his ex-con brother who resort to desperate measures to save their West Texas ranch. The movie takes the audience on a wild ride and the critics have given it rave reviews. *Hell or High Water* scored a 98% Tomatometer rating on Rotten Tomatoes.

Hell or High Water is the latest in a series of creative endeavors produced by OddLot Entertainment. Other productions include *The Way Way Back* (2013) starring Steve Carrell, *Drive* (2011) starring Ryan Gosling, and the Academy Award nominated *Rabbit Hole* starring Nicole Kidman (2010). OddLot's sister company, Relevant Theatricals, produced Chicago's longest running musical, *Million Dollar Quartet*. The musical dramatizes the legendary December 4, 1956 recording session at the Sun Records recording studio in Memphis when Elvis Presley, Johnny Cash, Carl Perkins and Jerry Lee Lewis played together for the first and only time.

The LA-based OddLot Entertainment has strong Chicago roots and a long-standing professional relationship with Burke, Warren, MacKay & Serritella through its affiliates.