5 PRACTICAL STEPS TO COMPLIANCE WITH THE NEW OVERTIME RULES

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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 FLSA 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 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,

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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.

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[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.