Big Changes Ahead for Overtime Exempt Employees

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The Fair Labor Standards Act (FLSA) was a revolutionary act established during the "New Deal" phase of President Franklin D. Roosevelt's presidency. The act established, for the first time, minimum wage requirements, overtime laws and created the standard work week for all Americans. Over time additional requirements have been added creating the current federal standards for employment pay in the United States.

Most recently, President Obama directed the Department of Labor to update some of these regulations. Included in this directive was a request to increase the compensation for executive, administrative, and professional ("EAP") employees, often called overtime exempt or salaried employees. Prior to this directive, the last increase to the minimum requirement for the base salary of these EAP employees occurred in 2004 and required that EAP employees be paid a minimum of $455.00 per week or $23,660.00 annually.

As one could imagine, this regulatory scheme was quite beneficial to employers, as those employees who satisfy the "duties test" (the test designed to indicate whether an employee constituted an executive, administrative, or professional employee) were exempt from being paid overtime for all hours worked in excess of forty (40) hours so long as they were provided with compensation equal to or greater than $23,660.00 annually. This is no longer the case however; as the Department of Labor's new regulations will substantially increase this amount to more than double the current level.

The final rule promulgated by the Department of Labor calls for the following changes to the current FSLA:

1. Sets the new standard salary compensation at the 40th percentile of the salary of full-time employees in the lowest wage census region. Currently the lowest wage census region is the South, with salaries at rate of $913.00 per week or $47,476.00 annually;
2. Established a mechanism for automatically updating the above amount every three (3) years according to the census region test; and
3. Increases the amount paid to highly compensated employees to the 90th percentile of full-time salaried workers nationally, which is currently $134,004.00.

What does this mean to you?

Well, starting December 1, 2016 the above changes go into effect. If you're an employer, it means you may soon have to pay your employees a lot more than you previously did. If you're

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an employee, you may soon be receiving a raise. The ultimate determination will be made by the employer however, as they will have to decide whether it is more cost effective to pay the employee a salary at or above the $47,476.00 threshold, or whether it will be more beneficial to pay the employee hourly with additional overtime rates.

Businesses should be wary, as failure to come into compliance could cost you tens if not hundreds of thousands of dollars in back pay and fines, and if you're an employee you want to make sure that you're being paid what you are legally entitled to receive. Whatever position you find yourself in, the need may arise to contact an experienced attorney who can help you navigate this ever changing field.

Please contact Cohen Cleary, P.C. to speak with your labor and employment law attorney at (508) 880-6677.

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