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Overview of the New Overtime Regulations

In May the Department of Labor published final rules revising overtime exemption regulations included in the Fair Labor Standards Act (FLSA). Those revisions become effective December 1, 2016.

Terminology/definitions of key terms will be imperative. Listed below are a few:

- **Exempt Employees** – refers to overtime eligibility status. Exempt staff are not eligible for overtime pay but must meet the salary threshold and the duties test.
- **Non-Exempt Employees** – refers to overtime eligibility status. Non-exempt staff are eligible for overtime pay for any hours worked over 40 in a given work week.
- **Work Week** – is any seven consecutive days and in many cases will not be the same as the pay period. Example: Monday to Sunday or Wednesday to Tuesday.
- **Duties Test** – this is the one way the FLSA distinguishes exempt from nonexempt employees. According to the Duties Test employees must fall under one of the following categories to qualify for exempt status:
 - a. **Executive** – (a) primary duty must be management; (b) must supervise at least two or more full time employees; and (c) must have authority to hire and fire
 - b. **Administrative** – (a) primary duty is performing non-manual work related to management or general business operations; and (b) must regularly exercise independent judgement and discretion with matters of significance for the business
 - c. **Learned Professional** – (a) primary duty requires advanced intellectual knowledge/education and exercise discretion and judgement; (b) advanced knowledge must be in a field of science or learning; and (c) must have prolonged course of specialized study/formal education

The Facts:

1. Annual salary threshold for white collar exempt employees increases from \$23,600 to \$47,476 (or from \$455/week to \$913/week)
2. Nondiscretionary bonuses/incentive pay can satisfy up to 10% of the new salary requirements but must be paid at a minimum of once per quarter. Annual bonuses would not qualify.
3. Highly compensated employees salary increases from \$100,000 to \$134,004 annually.
4. Salary thresholds will automatically update every three years, beginning January 1, 2020.
5. There are no changes to the "duties test".

The Plan:

1. Review and evaluate your company's current job descriptions and salary levels.
 - a. Determine which exempt positions are close to the new salary level
 - b. Decide which positions should be reclassified to non-exempt
 - c. Move employees as appropriate
2. Choose wisely and creatively from the following options based on the economics of your business:
 - a. Raise exempt employee's wages to the new salary requirement
 - b. Leave exempt employees' salary below the new level and pay time-and-half for overtime worked.
 - c. Limit workers' hours to 40 hours per week by reorganizing, adjusting schedules, hiring additional people or by requiring pre-approval of overtime hours.
 - d. Combine some of the above suggestions.
3. Develop, implement and train time-keeping processes and procedures for any affected employees. For those not accustomed to tracking their time, there will be a learning curve. Ensure you allow sufficient adoption time for the new plan.
4. Communicate. Any change to your employees' pay, even if it is an increase, will be a sensitive matter. More information can provide for an easier transition. Consider sending out a general notice to all employees and then follow up with individual employees that will be affected.
5. Get Assistance. New rules can be complicated, and the downside of getting it wrong may be costly. If you are not sure, contact your attorney or Federal Wage and Hour to help work out the details.

Remember an employee's title alone does not make them an exempt employee. In order to be exempt from overtime, the Department of Labor requires the salary and duties test must be met.

According to the Department of Labor, these changes will result in \$1.2 billion in extra earnings, either through pay increases or overtime compensation across the country. Illinois is estimated to have 200,000 employees affected by the changes.

NOTE: For the non-profit sector/governmental agencies, there are some variations to the requirements – further research may be needed, if so, contact your attorney or Federal Wage and Hour.

Please watch for any delays or changes Congress may make prior to the December 1st effective date.