

# LAW OFFICE OF LORI A. GOLDSTEIN, LLC

## CLIENT BULLETIN Summer 2016

### Prepare Now for December's Major Overtime Exemption Changes

As most know by now, in May the U.S. Department of Labor ("DOL") announced the final rule **amending the "white collar" overtime exemptions effective December 1, 2016.**

The final rule outlines significant changes to the executive, administrative, and professional exemptions:

- The **salary minimum** for the executive, administrative, and professional exemptions **will increase from \$23,660** (\$455 per week) **to \$47,476** (\$913 per week).
- The total annual compensation requirement for **"highly compensated employees"** **will increase from \$100,000 to \$134,004.**
- The salary basis test will now permit employers to **use non-discretionary bonuses and incentive payments like commissions, to satisfy up to 10 percent** of the salary threshold.
- The salary minimum will be automatically updated every 3 years to maintain a standard salary level at the 40th percentile of full-time salaried workers in the lowest-wage census region.

The drastic increase to the salary levels is predicted to add 4.2 million (currently exempt) workers to overtime pay rolls. Besides reclassifying exempt employees as non-exempt, employers will need to **budget for salary increases and/or increased overtime costs and consider cost-saving measures**, such as reducing hours, hiring part-time hourly workers, converting salaried employees to hourly employees at a lower hourly rate. Policies will need to be implemented and strictly enforced to comply with overtime laws, control overtime hours worked, and maintain accurate record-keeping.

#### Employers Should Act Now

December 1 is **less than 5 months** away, and now is the ideal time for employers to take steps to ensure compliance.

Consider employing legal counsel to conduct a wage and hour audit and update your policies:

- **Audit** the workforce and determine exempt employees whose salaries will no longer meet the new salary level.
- Decide whether to **increase salaries (and consider bonuses/incentives) or convert these employees to non-exempt** (but with careful consideration of multiple legal factors and options.)

- **Budget** for changes, perhaps reducing hours or hiring part-time hourly workers,
- Make sure that your “exempt” employees who meet the minimum salary test **also meet the** specific factors of the **executive, administrative, or professional primary duty tests**.
- For converted employees, be sure to make applicable changes, including providing **legally required meal breaks and paying overtime**. Remember that **Illinois employers must keep time records on all employees (both exempt and nonexempt.)**
- Review and **update off-the-clock work policies**. Consider implementing a policy regarding after-hours use of mobile devices for work-related purposes.
- Evaluate and update **time tracking and salary tracking systems**.
- **Train managers** to monitor and track reporting of work time and breaks.

#### **RELATED COMPLIANCE STEPS**

- As part of your audit and reclassification for overtime, **make sure that any “independent contractors” are properly classified**. Federal and state DOLs and other agencies continue to crack down on all types of worker misclassification.
- Be aware that DOL recently established **new standards for determining joint employment** under FLSA. When two or more employers jointly employ an employee, the **employee’s hours worked for all of the joint employers during the workweek are considered as one employment**, including for purposes of calculating whether **overtime pay** is due. Whether an employer is deemed a joint employer has significant repercussions for liability purposes, particularly with respect to wage and hour law. The likely result will be a greater number of employers violating these statutes.

---

#### **Announcements**

- ✓ **North Shore LAW College Send-Off Event –Student Health Care Power of Attorney: Students 18 and over and parents/guardians are invited to this free presentation by our highly qualified, experienced attorneys. Before your young adult goes off to college, gap year, or another venture, it is crucial that she or he have this opportunity to complete and execute an Illinois Power of Attorney for Health Care that includes a release of medical information and records.**

**Monday, July 25, 2016, 7:00-8:30 p.m.      Northbrook Public Library, 1201 Cedar Lane,      Pollak Room AB**

**PLEASE EMAIL YOUR RSVP TO: [jmbordo@me.com](mailto:jmbordo@me.com)**

This bulletin is an advertisement intended to provide clients and friends with general information and is not intended to provide specific legal advice or opinions. Employers and workers seeking assistance with topics addressed in this bulletin or other workplace issues should contact Lori Goldstein at (847) 624-6640 or [lori.a.goldstein@gmail.com](mailto:lori.a.goldstein@gmail.com). Please visit my website [www.lorigoldsteinlaw.com](http://www.lorigoldsteinlaw.com) for more information about the Law Office of Lori A. Goldstein, LLC.

© 2016 Lori A. Goldstein