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ALERT

DOL Issues Final Overtime Rule

September 25, 2019

WHAT: The Department of Labor (DOL) announced the issuance of its long-awaited final rule on overtime exemptions for executive, administrative, professional, outside sales, and computer employees on September 24, 2019. The final rule raises the minimum salary level necessary to exempt these employees from the Fair Labor Standards Act's (FLSA) minimum wage and overtime pay requirements, thereby qualifying, in DOL's estimate, 1.2 million additional workers for overtime protections. Specifically, the final rule raises the minimum salary from $455/week ($23,660 annually) for workers who work more than forty hours per week to $684/week ($35,568 annually). The final rule also increases the total annual compensation requirement for "highly compensated employees" (HCE) from $100,000 to $107,432 per year. As a result of these changes, DOL estimates that workers will receive $298.8 million in extra pay each year.

In addition to raising the minimum salary requirements, the final rule allows employers to use nondiscretionary bonuses and incentive payments (including commissions) that are paid at least annually to satisfy up to ten percent of the standard salary level.

DOL announced that it intends to update the standard salary and HCE total annual compensation levels more regularly in the future through notice-and-comment rulemaking, rejecting a proposal to update the earning thresholds every four years. The previous adjustment was made some fifteen years ago.

Finally, the rule formally rescinds the final rule issued by DOL on May 23, 2016, which was declared invalid and enjoined from enforcement by the United States District Court for the Eastern District of Texas.

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Practice Areas

Employment & Labor

Employment and Labor Standards Issues in Government Contracting

Government Contracts

WHEN: The final rule is effective on January 1, 2020.

WHAT DOES IT MEAN FOR INDUSTRY: DOL has estimated that the average annualized direct employer costs will be approximately $173.3 million over the first ten years. These direct costs include (1) regulatory familiarization costs, (2) adjustment costs, and (3) managerial costs. Employers should review current salaries of employees who earn between $455/week and $683/week to determine whether there are changes to the compensation structure or other strategies that might alleviate the impact of the new rule (e.g., raising hours, limiting overtime)

The final rule also has the potential for a unique impact on government contractors who have obligations under the Service Contract Labor Standards (SCLS), formerly known as the Service Contract Act (SCA). The definition of "service employee" in the SCLS is tied to the FLSA; executive, administrative, and professional employees who are exempt under the FLSA are not covered by the SCLS. By raising the salary requirement, the final rule has widened the number of employees who are non-exempt, and thus the number of employees covered by the SCLS. Contractors who have SCLS-exempt contracts need to confirm whether personnel previously treated as FLSA exempt no longer satisfy the salary requirement and whether any of the non-SCA covered contracts may be modified to now be covered by the SCLS because the work will no longer be performed almost exclusively by FLSA-exempt personnel. Contractors also have to evaluate whether they are able to request and receive price adjustments due to an increase in worker wages, whether it be from increased salaries, overtime pay, or fringe benefits.