

FEDERAL WAGE-AND-HOUR RULES CHANGES

An important change in the federal wage-and-hour rules becomes effective on December 1, 2016.

For employees to be exempt from federal overtime requirements, the Department of Labor (“DOL”) generally requires three tests to be met: (1) the employee must be paid a predetermined, fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (“salary basis test”); (2) the amount of salary paid must meet a minimum specified amount (“salary level test”); and (3) the employee’s job duties must primarily involve executive, administrative, or professional duties, with further requirements set out in the regulations (“duties test”). A new rule recently promulgated by the DOL will increase the salary level from \$455 per week (\$23,660 annually) to \$913 per week (or \$47,476 annually). Additional changes were made to the salary rules applicable to the “highly compensated employee” exemption, and the rule provides for automatic updates to the salary and compensation levels every three years. No changes have been made to the “duties test.”

Obviously, the new rule results in a significant increase in the number of employees who are potentially eligible for overtime compensation. Employers may be able to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the salary level test, but the rule imposes technical requirements regarding the timing of the payments.

In response to this new rule, employers may elect to (a) increase an employee’s salary above the new threshold, to avoid paying overtime to that employee, (b) pay overtime to employees who do not meet the new salary test and who work over forty (40) hours per week, or (c) limit non-exempt employees’ work to forty (40) hours per week or less. If these options require an employer to reassign duties in order to preserve an employee’s exempt status, it is important to ensure that the employee’s duties continue to comply with the DOL’s duties test.

The federal wage and hour laws are very technical. Employees who are improperly classified as exempt may be permitted to recover not only past overtime owed, but liquidated damages in the form of a doubling of that amount, in addition to attorney’s fees and costs.

Miller, Griffin & Marks has extensive experience not only in litigating wage-and-hour matters, but also in reviewing employers’ existing classifications of employees to ensure compliance. If you have any questions or concerns regarding your employees’ classifications, or the new DOL rule, please do not hesitate to contact us at telephone: 859-255-6676.