KAUFMAN | DOLOWICH

Mansfield Rule Certified 2022-2023

KD Employment Law Alert: The U.S. Department of Labor Issues New Overtime Regulations

By: Keith J. Gutstein, Erika H. Rosenblum, and Kaitlin Silletti

In late September 2019, the U.S. Department of Labor ("DOL") issued its Final Rule modifying the regulations used to determine whether executive, administrative and professional employees qualify for exemptions from overtime under the Fair Labor Standards Act ("FLSA"). The new rule will go into effect on January 1, 2020.

The new rule significantly changes the salary level test for white-collar employees by increasing the threshold from $23,660 per year or $455 per week to $35,568 per year or $684 per week. The new federal regulation permits employers to satisfy up to 10% of the salary threshold ($3,556.80) through nondiscretionary bonuses, incentive payments or commission so long as they are paid at least annually. Additionally, employers are permitted to make one "catch up" payment either at the end of the year or within one pay period after the employee's separation from employment to ensure that the employee meets the salary threshold for the federal exemption from overtime.

In addition to increasing the salary threshold for the white-collar exemptions, the new rule raises the threshold salary amount of "highly compensated employees" ("HCEs") from $100,000 to $107,432.

For employers, the increased salary threshold for white-collar employees means that employees who are currently exempt and earn less than $684 per week will no longer be eligible for the federal exemption. It is estimated that the new regulation will result in the reclassification of more than one million exempt employees to nonexempt employees. While employers may attempt to simply raise the salary of the employees they deem to be exempt, employers must not forget that in order for an employee to be properly classified as exempt, the employee must meet the salary threshold and satisfy the applicable duties test.

Employers are reminded that while the DOL has increased the minimum salary threshold, there are a number of states, including New York, with even higher salary thresholds for the executive, administrative and professional employee exemption. Therefore, while the employers should take note of the new DOL regulations, awareness of the individual state laws addressing exemptions is critically important. Moreover, some states do not permit employers to use non-discretionary bonuses, incentive payments or commissions to satisfy the salary threshold.

Employers are directed to contact counsel to assist with properly classifying employees as exempt or non-exempt and to determine compliance with applicable federal, state and local wage and hour laws. For more information about the new legislation, or this alert, please contact Keith Gutstein, Erika Rosenblum, or Kaitlin Silletti, by email at KGutstein@kaufmandolowich.com, ERosenblum@kaufmandolowich.com, KSilletti@kaufmandolowich.com or by phone at (516) 681-1100, or any member of Kaufman Dolowich & Voluck's Labor & Employment Law Practice Group.