ARE YOU PREPARED? THE NEW OVERTIME RULES COULD BE JUST AROUND THE CORNER

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The best advice for employers waiting for the new overtime rules? Hope for the best, and prepare for the worst. Last fall the federal Department of Labor (DOL) proposed a new overtime rule which would require employers to pay time-and-a-half overtime pay to all workers, even those performing exempt duties, unless the workers were paid at least $50,440 per year. In Idaho’s job market, that is a hefty sum that many current exempt workers are not receiving. Previously exempt workers would then be asked to track their hours, report them, and be paid overtime for any hours worked over 40 in a single work week.

BEST CASE SCENARIO

Perhaps for employers seeking to avoid overtime liability for lower paid exempt workers, the best result would be that the DOL withdraws the proposed rule (not likely) or that Congress passes legislation signed by the President pre-empting the new rule (also unlikely). Employers don’t have to wait for finalization of the DOL’s proposed overtime rule before beginning to analyze their workforce and the implications of the new rule.

PROPOSED NEW OVERTIME RULE

In order for a worker to be exempt from overtime payments, three criteria must be met: (1) The worker must be paid a salary, a set amount per month that does not change with the amount of work performed; (2) The worker must be paid more than the salary level set by the rule (currently $23,660); and (3) The worker must perform exempt duties (the most common being executive, administrative, or professional duties). The salary level test has gotten little attention over the past few decades because it was set so low that almost all exempt workers met it. But when the DOL proposed to almost double the salary level, employers were forced to pay attention. The rule was released in the fall, and comment was invited. Over a quarter million comments were received. The next step was for the DOL to review the comments, and either amend the rule or release it as a final rule. While we do not know when the final rule will be released, one of the final steps in promulgation of a final rule is to send it to the federal Office of Management and Budget for review, and that step occurred on March 14. So we know that the final rule is close to being released, and it is anticipated in the next couple of months. In the meantime, a bill was introduced in Congress that would nullify the effect of the rule, but it will take some time for that to be considered (and with no final rule it may be premature). Even if legislation does come forth, it is unlikely the President would sign it.

WHAT DO EMPLOYERS DO NOW?

- The first step is to begin analyzing current positions. For those that are considered exempt from overtime, analyze their salary levels. For those that fall below about $40,000 in salary, it is almost certain that the DOL will raise the salary level above that point, so those positions should be flagged. For those that fall between $40,000 and $50,440, determine the impact of raising all salaries to the
higher amount. While no raises need occur until the final rule comes out (and there will be a 60 day comment period, at least) at least the employer will know the financial impact of the possible changes.

- Analyze how many hours a week the employees below the higher level are working. For those that may not be raised to the level imposed, determine the potential cost in overtime.
- Examine current rules on overtime and make sure employer policies on seeking permission are clear.
- Begin preparing communication with all employees to assure them of their value to the company, while explaining the potential impact of the new rules on each class or position.

Please contact a Gjording Fouser lawyer at 208.336.9777 if you would like any additional information about this topic or any other employment issues facing your company.