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All Employers Should Review Employee Classifications In Light Of New Overtime Regulations

Employers and employees have often complained about the antiquated standards that exist under the federal Fair Labor Standards Act (“FLSA”) to determine who is exempt from overtime. Because many of the regulations were promulgated over 50 years ago, they do not address many of the realities of modern workplaces. The United States Department of Labor (“DOL”) has addressed some of those concerns by significantly revising the federal overtime exemption regulations. Because the standards for determining whether employees are exempt from the federal overtime rules have been altered so dramatically, it is imperative that employers review their employee classifications to determine whether they satisfy the new standards. They must also comply with the standards under any applicable state laws. When the state and federal rules differ, employers must comply with the more stringent standard.

Although the changes to the federal regulations are too numerous to list here, they include the following:

- A tripling of the minimum salary requirement for executive, administrative, and professional employees to \$455 per week, which equates to an annual salary of \$23,660;
- A new exemption for highly-compensated employees who receive over \$100,000 per year in total compensation, provided that they receive at least \$455 per week on a salary basis and satisfy a simplified duties test;
- Significant revisions to the “duties tests” for the executive, administrative and professional exemptions, often referred to as the “white-collar” exemptions;
- An express recognition of exempt executive employees’ ability to simultaneously perform exempt and non-exempt duties;
- A deletion of the special rules for executives who are in “sole charge” of an establishment;
- Significant changes to the “salary basis” rules, including a “safe harbor” provision that provides employers with a defense to salary basis violations if they implement and enforce policies to address improper deductions;
- Revisions to the computer-related occupation exemption, including express language allowing employees to be paid on an hourly basis at the rate of \$27.63 per hour or on a salary basis at the rate of \$455 per week to qualify for the exemption.

In light of these and other significant changes to the federal overtime regulations, employers should review their positions and consult with their labor counsel regarding whether their employees meet the new standards. Employers should also revise their compensation policies to address the new salary basis rules. The new federal regulations are scheduled to go into effect on August 23, 2004.

Employers in California should note that they must comply with both the federal and California overtime laws. Accordingly, California employers must ensure that employees whom they currently classify as exempt satisfy both the California and federal exemption standards.

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