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Overtime Pay Changes May Be Delayed Until Mid-to-Late 2016

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The Department of Labor (DOL) does not expect to issue its final rule changing the overtime exemptions until mid-to-late 2016, according to a recent report in the Wall Street Journal. The report states that Solicitor of Labor, Patricia Smith, provided the new timeline at an American Bar Association Labor and Employment Law conference in Philadelphia last week. The final rule is expected to greatly expand the number of employees who are eligible for minimum wage and overtime pay. If the final rule is delayed until mid-to-late next year, the changes probably won't go into effect until sometime in 2017.

Why The Delay?

In March 2014, President Obama directed the DOL to update its regulations defining which white collar employees are exempt from the minimum wage and overtime pay requirements of the Fair Labor Standards Act (FLSA). It took over a year – until July 6, 2015 – for the DOL to issue its proposed changes. The proposed rules raise the salary threshold for white collar exemptions to the 40th percentile of weekly earnings for full-time salaried workers nationwide, or an estimated \$970 per week/\$50,440 per year. The salary threshold for highly compensated exempt employees would go up from \$100,000 to about \$122,148 per year. The proposed rules include a mechanism for automatic annual increases to the salary thresholds. See an earlier blog post from Calder Huntington for a more detailed explanation of the proposed changes.

After the proposed rules came out in July, businesses and organizations flooded the DOL with an estimated 290,000 comments. Solicitor Smith reportedly told the ABA conference attendees that the large volume of comments and the complex nature of the changes were the cause of the delay in issuing the final rules. Another explanation could be politics and the desire to wait to issue the new rules until after next year's presidential election.

Next Steps

Employers may have more time to prepare for the expected overtime pay changes, but the timing remains uncertain despite the Solicitor's comments. Plan to review the employees you currently consider to be exempt and note those positions and persons that are being paid close to the salary threshold. Those will be the ones who may no longer be exempt after the salary thresholds go up. Although no changes to the duties requirements were part of July's proposed rule, the DOL asked for comments on the duty rules. Accordingly, the FLSA white collar exemption duty requirements could change after the final rules come out. We will

keep you posted on any new developments.

If you have any questions about this, or any other wage issue, please feel free to contact Mark Wiletsky at MBWiletsky@hollandhart.com or 303-473-2864, or any other Holland & Hart employment attorney with whom you regularly work.

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