IslerDare PC
Client Alert

EMPLOYMENT LAW UPDATE

New FLSA Salary Threshold Delayed

On November 22, 2016, a federal judge in Texas issued a nationwide preliminary injunction prohibiting enforcement of the U.S. Department of Labor's new overtime regulations governing the minimum salary level for exempt executive, administrative and professional employees. The new rules, which were to take effect December 1, 2016, would raise the minimum annualized salary from $23,660 to $47,476. The judge's decision means that the $23,660 minimum remains in place for now.

This ruling is not the final word. The Department of Labor (DOL), which issued the new rule, could file an emergency appeal to the federal court of appeals asking that the injunction be lifted or could elect to abandon or modify the regulations under the incoming Trump administration. At this point, the outcome is impossible to predict.

So what should employers do? If you were planning to make changes as a result of the new salary minimum, you can move forward voluntarily, but whether to do so will depend upon your circumstances:

- Many employers utilized the new salary threshold as an opportunity to correct misclassifications of workers that already may have existed within their workforce. Those employers would be well-advised to proceed with their plans to implement those corrective actions and convert the affected employees to non-exempt status.

- Other employers may have a reasonable basis to conclude that certain workers are, in fact, exempt under the duties tests, but they were converting those workers to non-exempt only because of the new higher salary thresholds. In those instances, holding to the status quo may be the best course since many employees feel that the conversion from salaried, exempt status to hourly, non-exempt status is a demotion.

- Some employers whose employees were within the range of the new threshold (for example, an employee making $45,000 annually) may have informed those employees that they would be receiving a raise to the new threshold ($47,476). While not mandated unless and until the new rules go into effect, there may be sound employee relations reasons for implementing the raise anyway.

- For employers who were converting some highly paid employees to non-exempt status primarily because they fell between the old highly compensated threshold ($100,000) and the new highly compensated threshold ($134,004), it would seem to make sense to hold off on those modifications.

We will keep you apprised of further significant developments, and of course our attorneys remain available to provide counsel based upon your organization's individual situation. If we may be of assistance with any questions you have about the proposed regulatory changes, please contact any of our attorneys or call the office to speak with Steve Brown (Richmond) or Mark Papadopoulos (Tysons).

TYSONS OFFICE
1945 Old Gallows Road, Suite 650
Vienna, Virginia 22182
703-748-2690

RICHMOND OFFICE
411 E. Franklin Street, Suite 203
Richmond, Virginia 23219
804-489-5500