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SEVEN STEPS FOR EMPLOYERS TO TAKE TO ADDRESS THE DOL OVERTIME FINAL RULE

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Due to extensive media coverage, most employers are aware that the effective date for the Department of Labor’s (DOL) Final Overtime Rule is December 1, 2016. As Dilworth Paxson attorneys work with employers to determine how best to manage compliance for their organizations by that date, guidance on steps that can be taken will prove helpful.

Although the duties test for exempt positions remains intact, the salary threshold in the DOL Overtime Final Rule issued on May 18, 2016 raised the salary threshold for classifying exempt employees from \$23,660 per year (\$455 per week) to \$47,476 per year (\$913 per week).

The Seven Steps listed below are intended to help employers in determining how to minimize any unnecessary costs associated with the rule changes while ensuring that business needs are being met. Gathering the relevant information, determining if any employees’ salaries should be increased so that their exempt status is preserved, taking steps to accommodate work outside of regular work hours, modifying staffing, updating policies requiring pre-approval for overtime, communicating changed compensation, and ensuring system-wide coordination of changes will help to ensure compliance.

As we develop strategies with clients to ensure compliance with the rule changes, we have discovered that looking back at the past year to determine actual hours worked by exempt employees, as well as determining what work exempt employees are doing outside of regular working hours, provides the information needed to create the best outcome for your organization. Listed below are steps that Dilworth Paxson suggests will help to proactively determine solutions that can be simply implemented.

Step One

First, identify each of the employees currently classified as exempt who annually make between \$23,660 and \$47,476 and require them to keep a log of their hours over the next month, with a total of hours actually worked (specifically excluding vacation days, holidays, leave or lunch and breaks). Ask the same employees to then describe the reason for any overtime (i.e. attending a conference that includes travel, entertaining clients off-hours, work that needs to be completed post-shift, workload ebbs and flows) and whether the amount of overtime varies throughout the year (i.e., seasonal work or unanticipated projects). Ask employees for input on creative solutions to decrease the need for working after regular work hours.

Step Two

Determine whether any of the employees currently classified as exempt are paid annual commissions or non-discretionary bonuses. Under the DOL's Overtime Final Rule, this type of compensation can count for up to 10% of the new salary threshold of \$47,476 per year.

Step Three

Consider whether shift work could accelerate overtime. Remember that shift work must be completed within a 15 hour day. Analyze whether your organization could ensure that all work is performed within the 40 hours per week for those employees whose annual salaries fall below the \$47,476 per year threshold.

Step Four

Establish a policy requiring that employees obtain pre-approval from a supervisor for overtime hours and meet with supervisors to discuss other creative ways to adjust schedules. For example, employers could consider re-staffing shifts with additional non-exempt supervisors and re-allocating work to decrease the need for overtime pay.

Step Five

Once the determinations are made on pay changes, schedule changes, and classification changes for each employee, employers should develop a record on the steps taken and communicate this plan to address the changes to the staff. Make sure that changes being implemented are communicated to those employees that are higher up the chain of command, so that senior management appreciates that any formerly exempt employees will now be receiving overtime pay. In addition, any new policy changes (i.e. overtime pre-approval by a supervisor) must be consistent with any collective bargaining agreements with union employees, your organizational employee handbook, and applicable policies and procedures.

Step Six

Communicate any compensation changes to accounting, payroll and other internal record keeping departments so that each maintains updated records to ensure proper calculations and pay when the DOL Overtime Final Rule takes effect on December 1, 2016.

Step Seven

Call Dilworth's labor and employment attorneys to help you determine what steps your organization should implement to ensure compliance with the DOL Overtime Final Rule while achieving organizational objectives and minimizing unnecessary overtime. Our attorneys can help you create



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the documents and policies needed to make the transition under the DOL Overtime Final Rule smooth and seamless.