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CLIENT ALERT

U.S. DEPARTMENT OF LABOR REBOOT ON OVERTIME SALARY RULE

The U.S. Department of Labor (“DOL”) recently decided not to defend a proposed overtime rule that would have increased the minimum salary level for employees exempt from the federal overtime requirements from \$455 per week (\$23,660 annually) to \$913 per week (\$47,476 annually). This proposed rule was summarized in an earlier client alert published on May 19, 2016, entitled “[New Overtime Rule from Department of Labor Requires Strategic Decisionmaking by Employers.](#)”

As you may recall, on November 22, 2016 a District Court in Texas issued an injunction blocking implementation of this new rule. See “[New Overtime Rule Temporarily Blocked by Federal Court.](#)” The effect of that injunction was that the new rule would not go into effect unless DOL successfully appealed the decision.

Under newly appointed Secretary of Labor Alexander Acosta, DOL had been delaying the appeal to give the Trump administration time to develop its policy. On June 30, 2017, DOL announced that it would not defend the new overtime rule and instead would begin a new rulemaking process which would likely result in a less significant increase in the minimum salary level.

That rulemaking process officially began on July 25, 2017 when DOL announced that it was beginning a Request for Information (“RFI”), the first step of the rulemaking process. The questions included in the RFI indicate that DOL is considering (1) rethinking which workers qualify for overtime, (2) adding different pay level requirements for different geographic areas, and (3) abandoning the salary test altogether.

IMPLICATIONS FOR EMPLOYERS

1. DOL dropping its defense of the proposed overtime rule means that pending further action, the minimum salary level required for exempt employees will remain at the original \$455 per week level. This means that employers who had planned to raise the salaries of exempt employees because of the previously-proposed overtime rule may not need to do so.
2. DOL’s questions indicate that the salary level minimum could take an entirely different form than the previously proposed regulations, and could even remove the salary test entirely. Employers are advised to stay apprised of the DOL rulemaking process.

For any questions about the current and proposed overtime rules or other employee wage and hour issues please contact Attorney Paul Holtzman (PHoltzman@kb-law.com) or Attorney Jill Brenner Meixel (JMeixel@kb-law.com) at (617) 482-7211.

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