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Employee Overtime: New Department of Labor Rule May Impact School District's Bottom Line

On May 18, 2016, the United States Department of Labor issued its final rule updating the overtime regulations under the Fair Labor Standards Act ("FLSA"). The new rule goes into effect on December 1, 2016, and applies to all employees of state and local governments, including school districts, who are not exempt from overtime pay.

Those employees who were previously entitled to overtime pay (*e.g.,* custodians) remain entitled to overtime pay. Teachers and most administrative employees remain exempt from overtime pay. The new rule affects those employees who were previously exempt from overtime pay due to a combination of their job duties and their salary (*i.e.,* executive employees, administrative employees, professional employees, computer employees, and

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outside sales employees). The new rule raises the threshold salary those employees must earn to remain exempt from overtime pay.

Under the current FLSA regulations, an exempt employee, other than a teacher, must earn at least $455 per week (equivalent to $23,660 annually for a full time employee) and perform job duties that satisfy one of the exemptions (*i.e.,* executive employee, administrative employee, professional employee, computer employee, or outside sales employee) in order to be exempt from overtime pay. The new rule raises the threshold annual salary for those employees from $23,660 to $47,476.

Thus, after December 1, 2016, a previously exempt employee, other than a teacher, must earn at least $47,476 and retain her/his previously exempt job duties to remain exempt from overtime pay. School districts will need to contend with several categories of employees who will become eligible for overtime pay under the new rule, such as administrative assistants and computer employees, that don’t earn the applicable salary to remain exempt. This threshold salary will be adjusted every 3 years.

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Because the new rule goes into effect December 1, 2016, these changes can impact the bottom lines for school districts beginning with the 2016-2017 school year. The increased overtime expenses of nonexempt employees should be considered as you develop your annual budgets. Also, inasmuch as the minimum salary threshold will adjust every three years, with the next change to come on January 1, 2020, school districts will need to account for future increases as they take effect in the middle of fiscal years.

As a reminder, recent rules issued by the Illinois Department of Labor pursuant to the Illinois Wage Payment and Collection Act require all employers, including school districts, to keep a daily record of hours worked by all employees. Failure to do so will deprive employers of the evidence needed to defend an overtime pay dispute.

If you have questions regarding this topic, please contact one of our attorneys in Oak Brook (630.928.1200) or Flossmoor (708.799.6766).

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