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HR News Alert

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Proposed Changes to Overtime Eligibility Rules for 'White Collar' Workers

The U.S. Department of Labor is proposing to update the rules governing which **executive, administrative, and professional employees** ("white collar workers") are entitled to the minimum wage and overtime pay protections of the federal Fair Labor Standards Act (FLSA).

Unless exempt, employees covered by the FLSA must receive the federal minimum wage of at least $7.25 per hour and overtime pay for hours worked **over 40 in a workweek** at a rate **not less than time and one-half** their regular rates of pay. (Note: **When both the FLSA and a state law apply, an employee is entitled to the most favorable provisions of each law**. Be sure to check your state's wage and hour laws for requirements related to minimum wage, overtime, and exemptions.)

The current federal rules provide an **exemption** from both the FLSA minimum wage and overtime pay requirements for bona fide executive, administrative, and professional employees who meet certain tests regarding their job duties and who are paid on a salary basis at not less than $455 per week ($23,660 per year). **The agency's proposed rule would raise this salary threshold from $455 a week to a projected level of $970 per week ($50,440 annually) in 2016**.

Other highlights of the proposal include changes to the total annual compensation requirement needed to exempt highly compensated employees from the FLSA's minimum wage and overtime pay protections, and the consideration of two alternative mechanisms for automatically updating the salary and compensation levels going forward.

Our section on Employee Pay includes additional information on FLSA exemptions and these proposed changes.

ACA Information Reporting Penalties Will Increase in 2016

As part of a new law, the penalty amounts that may apply to employers subject to the Affordable Care Act's information reporting requirements will increase next year. These employers must report certain details regarding health care coverage and other information to the IRS and to covered individuals for the first time in early 2016 for calendar year 2015.

Information Reporting Penalties
Large employers with **50 or more full-time employees** (including full-time equivalents) and self-insuring employers that provide minimum essential health coverage (**regardless of size**) that do not comply with the information reporting requirements may be subject to the general reporting penalties under the Internal Revenue Code for failure to file correct information returns and failure to furnish correct payee statements.

In general, the penalties—including increases under the new law—are as follows:

- The penalty for failure to file an information return is $100 **(increased to $250)** for each return for which such failure occurs. The total penalty imposed for all failures during a calendar year cannot exceed $1,500,000 **(increased to $3,000,000)**.

- The penalty for failure to provide a correct payee statement is $100 **(increased to $250)** for each statement with respect to which such failure occurs, with the total penalty for a calendar year not to exceed $1,500,000 **(increased to $3,000,000)**.

The law will apply with respect to returns and statements required to be filed after December 31, 2015; however, the IRS has stated that it **will generally not impose penalties** for 2015 returns and statements filed and furnished in 2016 on reporting entities that can show that they have made **good faith efforts** to comply.

Other Resources
Additional details on the information reporting requirements for self-insuring employers are available in IRS Questions and Answers. More information about the information reporting requirements for large employers subject to "pay or play" is available in separate IRS Questions and Answers.

Be sure to check out our Information Reporting section for more on these requirements.

Avoiding Employee Misclassification Under the Fair Labor Standards Act

New guidance is available for employers on how to avoid misclassifying employees as independent contractors for purposes of the federal Fair Labor Standards Act (FLSA), which sets basic minimum wage and overtime pay standards. According to the guidance, **most workers are employees under the FLSA**.

To determine whether a worker is an employee or an independent contractor under the FLSA, courts and the U.S. Department of Labor use the multi-factor "economic realities" test, outlined below, which focuses on whether the worker is economically dependent on the employer or truly in business for him or herself:

- **Is the Work an Integral Part of the Employer's Business?** If the work performed by a worker is integral to the employer's business, it is more likely that the worker is economically dependent on the employer. A true independent contractor's work, on the other hand, is unlikely to be integral to the employer's business.
- **Does the Worker's Managerial Skill Affect the Worker's Opportunity for Profit or Loss?** This factor should not focus on the worker's ability to work more hours, but rather on whether the worker exercises managerial skills and whether those skills affect the worker's opportunity for both profit and loss.
- **How Does the Worker's Relative Investment Compare to the Employer's Investment?** The worker should make some investment (and therefore undertake at least some risk for a loss) in order for there to be an indication that he or she is an independent business. The worker's investment should not be relatively minor compared with that of the employer. If the worker's investment is relatively minor, that suggests the worker and the employer are not on similar footings and that the worker may be economically dependent on the employer.
- **Does the Work Performed Require Special Skill and Initiative?** A worker's business skills, judgment, and initiative—not his or her technical skills—will aid in determining whether the worker is economically independent.
- **Is the Relationship Between the Worker and Employer Permanent or Indefinite?** Permanency or indefiniteness in the worker's relationship with the employer suggests that the worker is an employee. However, a lack of permanence or indefiniteness does not automatically suggest an independent contractor relationship. The key is whether the lack of permanence or indefiniteness is due to operational characteristics intrinsic to the industry, or the worker's own business initiative.
- **What is the Nature and Degree of the Employer's Control?** The employer's control should be analyzed in light of the ultimate determination of whether the worker is economically dependent on the employer or truly an independent businessperson. The worker must control meaningful aspects of the work performed such that it is possible to view the worker as a person conducting his or her own business.

More information on which employers and workers are covered under the FLSA is featured in our section on the Fair Labor Standards Act.

5 Guidelines for Protecting Employees from Heat Stress

Did you know that heat is the number one weather-related killer in the United States? With temperatures rising across much of the country, it is critical that employers recognize the hazards of working in hot environments and take steps to reduce the risk to workers. Consider the following actions that can help protect employees:

1. **Provide heat stress training**. Topics you may wish to address include worker risk, prevention, symptoms (including the importance of workers monitoring themselves and coworkers), treatment, and personal protective equipment.
2. **Schedule hot jobs for the cooler part of the day**. The best way to prevent heat illness is to make the work environment cooler. Monitor weather reports daily and reschedule jobs with high heat exposure to cooler times of the day. When possible, routine maintenance and repair projects should be scheduled for the cooler seasons of the year.
3. **Provide rest periods with water breaks**. Provide workers with plenty of cool water in convenient, visible locations in shade or air conditioning that are close to the work area. Avoid alcohol and drinks with large amounts of caffeine or sugar.
4. **Monitor workers who are at risk of heat stress**. Workers are at an increased risk of heat stress from personal protective equipment, when the outside temperature exceeds 70°F, or while working at high energy levels. Workers should be monitored by establishing a routine to periodically check them for signs and symptoms of overexposure.
5. **Acclimatize workers by exposing them for progressively longer periods to hot work environments**. Allow workers to get used to hot environments by gradually increasing exposure over at least a 5-day work period. The U.S. Occupational Safety and Health Administration (OSHA) suggests beginning with 50% of the normal workload and time spent in the hot environment, and then gradually building up to 100% by the fifth day.

Employers should note that under federal law, they have a legal obligation to provide a workplace free of heat-related hazards that are likely to cause death or serious bodily harm. Additionally, certain states (e.g., California) may have their own heat-illness prevention standards.

Resources for Employers and Workers
OSHA's Heat Illness Website provides information and resources on heat illness for workers and employers, including how to prevent it, what to do in the case of an emergency, educational materials, and a curriculum to be used for workplace training. The Centers for Disease Control and Prevention also has a page dedicated to providing information on heat stress (including symptoms and first aid), along with fact sheets and other resources for protecting employees.

Our section on Safety & Wellness includes additional tips for maintaining a safe and healthy workplace.

Final Rules Expand ACA Contraceptive Mandate Accommodation

Federal agencies have finalized prior guidance related to the Affordable Care Act's preventive services provisions, which require non-grandfathered group health plans to provide coverage for certain preventive health services (including contraceptive services) without cost-sharing.

Among other things, the final rules extend the availability of the existing accommodation for non-profit religious organizations (from contracting, providing, paying, or referring for contraceptive services) to certain **closely held for-profit entities** that object to providing contraceptive coverage based on sincerely held religious beliefs. The rules also finalize standards concerning documentation and disclosure of a closely held for-profit entity's decision not to provide coverage for contraceptive services. The final rules will generally apply on the first day of the first plan year that begins **on or after September 14, 2015**.

To learn more about the requirement to cover recommended preventive services without cost-sharing, visit our section on Preventive Services.

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