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HR News Alert

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Changes to Federal Overtime Rules for 'White Collar' Workers

A final rule, effective **December 1, 2016**, updates the regulations 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).

Current Rules
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). "Highly-compensated employees" (HCEs) who are paid total annual compensation of $100,000 or more and meet certain other conditions are also deemed exempt.

Key Changes
The final rule focuses primarily on updating the salary and compensation levels needed for executive, administrative, and professional workers to be exempt. No changes are being made to the current job duties tests. In particular, the final rule:

- Raises the salary threshold from $455 a week to **$913 per week (or $47,476 annually)** for a full-year worker;
- Increases the **HCE total annual compensation level** to **$134,004 annually**;
- Establishes a mechanism for **automatically updating the salary and compensation levels every 3 years, beginning on January 1, 2020**; and
- Amends the regulations to **allow employers to use nondiscretionary bonuses, incentives, and commissions** to satisfy up to **10%** of the new standard salary level, **so long as** employers pay those amounts on a quarterly or more frequent basis.

Note: When both the FLSA and a state law apply, the employee is entitled to the most favorable provisions of each law.

Our section on the Fair Labor Standards Act features additional information on exemptions from the law's minimum wage and overtime requirements.

Employers Should Continue to Use Current Version of Form I-9 Until Further Notice

As a reminder, U.S. Citizenship and Immigration Services has advised that employers should continue using the current version of Form I-9, **even though the March 31, 2016 expiration date on the form has passed**. The agency recently proposed several revisions to Form I-9 and stated that it will provide updated information about the new version of the form as it becomes available.

Federal law requires employers to hire only individuals who may legally work in the United States--either U.S. citizens or foreign citizens who have the necessary authorization. To comply with the law, employers must verify the identity and

employment authorization of each person they hire by completing and retaining Form I-9.

For more information on complying with the employment eligibility verification requirements, please visit our section on Form I-9.

Certain Employers May Receive Marketplace Notices

The Affordable Care Act (ACA) and its accompanying rules require Health Insurance Marketplaces to notify any employer whose employee has enrolled in a Marketplace plan and has been determined eligible for advance premium tax credits and cost-sharing reductions. A sample employer notice that will be used by the federally-facilitated and certain state-based Marketplaces is now available for review. Because these events may trigger employer penalties under the ACA's "pay or play" provisions, an employer appeal request form has also been provided by the federal government.

Receipt of Notices
Marketplaces must notify employers **within a reasonable timeframe following any month of the employee's eligibility determination and enrollment**. Previously released FAQs indicated that the Marketplaces **would begin sending out employer notices in spring 2016**, with additional notices to follow throughout the year.

Employer Appeals Process
Appeal of an employer notice generally must be made within **90 days**. In the appeal, the employer may assert that it provides its employee access to affordable, minimum value employer-sponsored coverage or that its employee is enrolled in employer coverage, and therefore that the employee is ineligible for advance payments of the premium tax credit.

Our Pay or Play section includes step-by-step guidance, worksheets, and calculators that can help employers understand if they will be subject to a penalty and how to calculate it.

6 Factors for Deciding Whether to Pay Interns

Are you planning to hire interns this summer? While it can be tempting to allow such individuals to volunteer at your place of business or pay less than the minimum wage, the fact is that **internships are most often considered "employment"** subject to the federal minimum wage and overtime rules.

The Fair Labor Standards Act
Under the federal Fair Labor Standards Act (FLSA), interns in the for-profit private sector who qualify as employees typically must be paid at least $7.25 per hour, and not less than one and one-half times the regular rate of pay after 40 hours of work in a workweek.

Note: When both the FLSA and a state law apply, the employee is entitled to the most favorable provisions of each law. Be sure to check your state wage and hour laws for applicable requirements.

The Test for Unpaid Interns
There are some circumstances under which individuals who participate in for-profit private sector internships or training programs may do so without compensation. The determination of whether an internship or training program meets this exclusion depends upon **all of the facts and circumstances**. The U.S. Department of Labor uses the following six criteria which must be applied when making this determination:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern, and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

If **all** of the factors listed above are met, an employment relationship likely does not exist under federal law, and the FLSA's minimum wage and overtime provisions do not apply to the intern. (This exclusion is narrow, because the FLSA's definition of "employ" is very broad.)

Visit our Employee Pay section for information on other common federal wage issues.

New Rules Apply to Wellness Programs Beginning in 2017

New rules issued by the U.S. Equal Employment Opportunity Commission describe how the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA) apply to wellness programs offered by employers that request health information from employees and their spouses. The new rules, which apply **beginning in 2017**, affect all workplace wellness programs (including those in which employees or their family members may participate without also enrolling in a particular health plan).

Background
The ADA and GINA, which apply to employers with **15 or more employees**, generally prohibit employers from obtaining and using information about employees' own health conditions or about the health conditions of their family members. Both laws, however, generally allow employers to ask health-related questions and conduct medical examinations **if the employer is providing health or genetic services as part of a voluntary wellness program**.

New Rules
Subject to certain conditions, the new rules generally allow employers to:

- Provide limited incentives as part of wellness programs that make **disability-related inquiries or require medical examinations**; and
- Offer limited inducements to an employee **whose spouse receives health or genetic services offered by the employer--including as part of a wellness program--and provides information about his or her manifestation of disease or disorder as part of a health risk assessment**.

In general, the maximum incentive or inducement **may not exceed 30% of the total cost of self-only coverage under the applicable health plan**. Among other things, the new rules also detail several requirements that must be met in order for participation in a wellness program to be considered voluntary, and require employers to **provide employees with a notice** clearly explaining what medical information will be obtained, who will receive it, how it will be used, and how it will be kept confidential.

Additional Information
In addition to complying with the ADA and GINA, certain wellness programs must meet specific requirements to satisfy nondiscrimination rules under the federal Health Insurance Portability and Accountability Act (HIPAA). Due to the changing law and the complexity of the requirements that apply to employment-based wellness programs, **employers are advised to check with a knowledgeable employment law attorney to ensure that any program complies with all applicable federal and state laws**.

Our section on Wellness Programs provides additional details.

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