Department of Labor Issues New Salary Level Threshold for White-collar Exemptions

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WASHINGTON, D.C. – This week, the U.S. Department of Labor (DOL) issued its long awaited revisions to the salary level threshold for the white-collar exemptions.

The final rule set the annual salary level threshold at $47,476 ($913 a week) rather than the higher level of $50,400, which it had proposed in July 2015. The reduction apparently occurred in response to the arguments of many commentators, including NFDA, that the original DOL proposal ignored the fact that the cost of living varies throughout the country. The lower threshold of $47,476 is now based on average salaries in the lowest-wage Census Region (currently the South) rather than national averages.

Unless blocked by Congress or the courts, the new regulation will take effect December 1, 2016. Additionally, the salary level will now be adjusted by the DOL every three years beginning January 1, 2020. It will be set at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region.

The final regulation made no changes to the factors used to qualify an employee as a professional, executive or high-level administrator under the white-collar exemptions. This was welcomed since some anticipated that the DOL would further tighten the requirements to qualify for those exemptions.

Currently, funeral directors in Minnesota and Ohio qualify as professionals according to the DOL's white-collar exemption regulations. However, based on a series of federal court decisions involving funeral directors, there is a strong argument that the professional classification may also be applied to licensed funeral directors and embalmers in the 14 states that require at least three years of post-secondary education and one year of apprenticeship or internship to qualify as a funeral director. Those 14 states include Idaho, Iowa, Michigan, Montana, Nebraska, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, Rhode Island, South Dakota, West Virginia and Wisconsin.

For the funeral homes in these 16 states that choose to pay their licensed funeral directors as salaried employees exempt from overtime provisions of the Wage & Hour laws, they will have to pay the employee at least $47,476 to maintain the professional classification. When calculating the amount of the salary, the new DOL regulations allow an employer to count nondiscretionary bonuses and incentive payments (including commissions) paid to the employee to satisfy up to 10 percent of the $47,476 threshold. Therefore, if licensed funeral directors and embalmers are paid set bonuses for certain tasks, such as nighttime removals and embalmings, or if they receive commissions for things such as preneed sales, those amounts may be be considered part of the salary to the extent that they do not exceed 10 percent of total consideration.

As noted above, the final regulation could be blocked by Congress. In March 2016, the Protecting Workplace Advancement and Opportunity Act (HR 4773/S 2707) was introduced in both the House and Senate. The bill would prohibit the Department of Labor from spending funds to enforce the new regulation. Although the bill has obtained a number of co-sponsors, it is anticipated that even if Congress passes it, it would be vetoed by President Barack Obama. It is doubtful that there are sufficient votes to overcome a veto. Therefore, legislative relief is highly unlikely.

[Editor's Note: Based on comments issued on the rule by Speaker Paul Ryan, expect a challenge to the rule. Said Ryan: “This regulation hurts the very people it alleges to help. Who is hurt most? Students, nonprofit employees and people starting a new career. By mandating overtime pay at a much higher salary threshold, many small businesses and nonprofits will be unable to afford skilled workers and be forced to eliminate salaried positions, complete with benefits, altogether. For the sake of his own political legacy, President Obama is rushing through regulations – like the overtime rule – that will cause people to lose their livelihoods. We are committed to fighting this rule and many others that would be an absolute disaster for our economy.”]

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