

**AN EMPLOYER'S COST TO AVOID OVERTIME OBLIGATIONS
WILL INCREASE DRAMATICALLY DECEMBER 1, 2016**

Under Federal Law (Fair Labor Standards Act – “FLSA”) employees are entitled to overtime, at the rate of time and one half, for hours worked in excess of 40 in a work week. There are exemptions from the overtime requirement for executive, administrative and professional employees whose duties satisfy the FLSA test for their category PROVIDED the employee receives a weekly salary of at least \$455 (Note: Under New York State wage and hour law the weekly salary requirement is \$675).

On May 18, 2016 the U.S. Department of Labor announced that the weekly salary requirement for an employee to qualify as exempt from the overtime requirement will be increased to \$913 effective December 1, 2016.

Employers who now pay over the exception amount, but will not when the weekly salary goes to \$913, face choices. If an individual is to remain overtime exempt, the employer will have to pay that employee \$913 or more weekly. An employer unwilling or unable to pay the \$913 salary must convert the employee to an hourly rate with eligibility for overtime after 40 hours. Such a conversion may be complicated.

By way of example, assume an employer is paying a full-time employee \$700 per week (\$36,400 annually) and said employee satisfies the duties test for professional, administrative or executive staff. As of December 1, 2016 the employee's status as exempt would be lost. If the employer believed the \$700 per week to be appropriate for the position, the employer would have to convert the employee to hourly pay. Provided the previously exempt employee does not work in excess of 40 hours per week, the conversion is simple arithmetic (divide the \$700 salary by 40 hours yielding an hourly rate of \$17.50).

The conversion process is far more complicated and less precise when, in a fairly common scenario, the former overtime exempt employee works in excess of 40 hours per week. In that case, to pay the employee \$700 per week requires a calculation of the typical number of overtime hours worked per week. If the employee was working 45 hours per week, the conversion would have to consider 5 hours of overtime, at 1 ½ times (\$700 divided by 47 ½ that is the equivalent of 40 hours straight time and 5 hours at 1 ½ times for overtime – yielding an hourly rate of \$14.73).

Employees may consider a conversion to hourly pay a demotion. Employers should be prepared to explain why the change was made and that the hourly rate was pegged to yield the same aggregate pay taking into account overtime pay after 40 hours. Once a conversion has been made, the employer should remain cognizant of the employee's actual earnings and make adjustment, where necessary; when the employee's annual earnings are running below expectations.

In addition to the three classic exemptions – professional, administrative and executive – the December 1, 2016 increase in salary requirement will also be applied to those individuals exempt as outside sales and computer employees. Also, highly compensated employees earning \$100,000 or more may be exempt. As of December 1, 2016 the compensation level for exemption will move up to \$134,004.

If you have any questions about whether and how the salary change will impact you or your organization, speak with Peter A. Schneider or Jonathan D. Farrell, Co-Chairs of the Labor and Employment Group at Meltzer, Lippe, Goldstein & Breitstone, LLP.