

Is Your Company Prepared for the U.S. Department of Labor's Amendments to the White Collar Exemptions?

Labor & Employment Law Update

By Sara Zorich on September 10, 2014

On March 13, 2014, we reported that President Barack Obama signed a Presidential Memorandum directing his Secretary of Labor to update the regulations to expand the number of employees eligible for overtime under the Fair Labor Standards Act (FLSA). In May 2014, the Obama Administration released its Regulatory Agenda indicating that the U.S. Department of Labor (DOL) was scheduled to release its "white collar" overtime exemption regulations proposed rules in November 2014. We anticipate that the new proposed regulations will be significantly narrower than the current regulations with regard to the duties which qualify for exempt status and the salary level. Most likely, no final rule making will be in effect until the spring of 2015 since the new regulations will be subject to a 30 day comment period which can be extended to 60 days.

Employers will need to pay particular attention to these new rules since employers continue to be faced with litigation over employees' exempt status. Recently in the matter of *Rogers v. AT&T Servs., Inc.*, N.D. Ill., No. 1:11-cv-05550, 9/3/14, Judge St. Eve of the Northern District of Illinois denied cross-motions for summary judgment regarding the exempt status of AT&T's Problem Determination Managers (PDMs). PDM's were responsible for managing outage calls regarding Middleware products. While the court found that the PDM's job duties directly related to AT&T's general operations satisfying the first prong of the administrative exemption, the court denied the cross motions for summary judgment holding there was a genuine issue of fact as to whether the PDM's exercised the requisite independent judgment and discretion to qualify for the administrative exemption. The court held there was not enough evidence in the record to assess whether and to the extent the employees were exercising independent, discretionary decisions about "significant" matters vs. summarizing the actions of others.

Employers can be proactive and prepare for the DOL's new regulations by (1) reviewing their current classification of employees as exempt or nonexempt under the current FLSA regulations and state law to ensure current compliance, (2) reviewing pay policies and work rules to ensure current compliance and identify any that may need to be updated, and (3) ensuring processes are in

place to track hours worked.

We will continue to monitor and communicate further developments as they occur.

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