Summary of the 2020 FLSA Regulation Changes for Employers

Labor & Employment Law Update

By Sara Zorich on January 31, 2020

2020 has already proven to be a busy year for changes in the Fair Labor Standards Act (FLSA). Below is a summary of the changes thus far:

1. **New FLSA Salary Threshold (Effective January 1, 2020)**

As previously reported, as of January 1, 2020, the FLSA requires employers to pay all salary exempt employees at least $684/week (equivalent to $35,568 per year for a full-year worker).

2. **Changes to the FLSA Regulations Regarding the "Regular Rate of Pay" for Purposes of Calculating Overtime (Effective January 15, 2020)**

The FLSA generally requires nonexempt employees to receive overtime pay of at least one and one-half times their *regular rate of pay* for any hours worked in excess of 40 hours per workweek, but what is included in the "regular rate of pay" is not always obvious. Based on years of court and agency precedent, and workplace changes since the regulations were implemented over 50 years ago, the DOL revised the following regulations to clarify and provide examples of whether certain benefits, perks and other miscellaneous payments must be included in the "regular rate of pay" for overtime purposes. Changes were made to the following regulations: 29 CFR §778.202, 203, 205, 207, 211, 212, 215, 217, 218, 219, 220, 221, 222, 223, 224, and 320. See the Department of Labor website for more information

3. **Joint Employer Final Rule (Effective March 16, 2020)**

The US Department of Labor updated the joint employer test under the FLSA (29 CFR 791.1 – 791.3) to address the changing nature of employment and varying court decisions. The test for joint employment is important because when two entities are found to be joint employers under the FLSA, each is liable for compliance with the provisions of the FLSA. Of note, a joint employer does not have to be a business. A joint employer can be an individual, partnership, association, corporation, business trust, legal representative, public agency, or any organized group of persons, excluding any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such a labor organization

The new joint employer rules address two different scenarios:

Scenario 1: Situation where an employee works one set of hours for an employer and another person/entity simultaneously benefits from that work. The other person/entity is a joint employer only if the other person/entity is acting directly or indirectly in the interest of the employer. Joint employment will be determined by applying the following four factors as to whether the other person/entity has direct control (or indirect control) over the employee:

- hires or fires the employee;
- supervises and controls the employee's work schedules or conditions of employment to a substantial degree;
- determines the employee's rate and method of payment; and
- maintains the employee's employment records.

The DOL has indicated that whether an individual or entity is a joint employer will depend on all the factors of a case and appropriate weight will be given to each factor depending on the circumstances. Further, additional factors may be relevant but only if they indicate whether the potential joint employer is exercising significant control over the employee.

Scenario 2: Situation where one employer employs an employee for one set of hours in a workweek, and another employer employs the same employee for a separate set of hours in the same workweek. If the entities are joint employers, then they must combine the hours worked for each entity for purposes of determining if the minimum wage and overtime requirements of the FLSA are met. The joint employer test will generally be met if:

- There is an arrangement between the two entities to share the employee's services;
- The employer is acting directly or indirectly in the interest of the other employer in relation to the employee; or
- If the entities share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.

The final rule also provides eleven (11) examples of how the test should be applied.

In light of these changes, employers should review their wage and hour practices for not only compliance with the FLSA but also compliance with state law as many state laws are more onerous than the FLSA.