

Legal Notes: January 2016

Delay, delay, delay. The monumental change in the wage and hour law on overtime/minimum wage is being delayed again. It was set to take effect early 2016, but now it looks like that won't happen until later 2016.

Dear readers may remember my recent column on these changes from July. To recap, all employees are considered to be subject to the federal wage and hour law. This law requires that employees be paid a minimum wage and time and a half for working more than 40 hours in a single week. Exemptions have been eating away at this law since it was first passed in the 1930's. Certain employees are "exempt" from the wage and hour law if they fit into one of the set categories, such as professional, managerial and administrative and are paid on a salary basis.

The problem was (and is) that the implementation of these "exemptions" were difficult for employers. This difficulty plus an economic incentive on the part of employers to find their employees "exempt" (thus avoiding paying overtime), lead to a great many misclassifications. Rather than retune the classification, the Department of Labor simply raised the salary limit that "exempt" employees had to earn from \$23,660 up to \$50,440. This means that before an employer even starts to look at "exempting" and employee, the employee must be earning at least \$50,440.

I've had a number of people call me whose job duties and pay are being reviewed under this new proposed standard. An employer has two choices when reviewing such employees. The employer can raise that employee's wages to the minimum salary threshold, \$50,440. Alternatively, the employer can simply pay time-and-a-half pay to the employee.

Some employers are no doubt complaining about the requirement to pay time-and-a-half. They see this as a government mandated increase in salaries. For some, this may be true. For many though, it will simply be requiring the employer to pay what the employer always should have been paying. Many employers have been unfairly categorizing employees as "exempt" and getting away with not paying required overtime for years. Employees, at least those who want to keep their jobs, were understandably reluctant to complain.

Let's hope the law doesn't get gutted during this delay.