

ARCHER & GREINER

ATTORNEYS AT LAW

Labor & Employment Client Advisory

April 21, 2004

United States Department of Labor Issues Final Changes to Overtime Regulations

After months of political debates and delays, the U.S. Secretary of Labor Elaine L. Chao on Tuesday announced the final regulations governing overtime eligibility for “white-collar” workers under the Fair Labor Standards Act (FLSA). According to Secretary Chao, “The department’s new rules guarantee and strengthen overtime rights for more American workers than ever before.” Dubbed the “FairPay” rule, these regulations mark the first significant revisions to “white-collar” overtime exemptions in nearly 50 years. The new FairPay rule will take effect on August 18, 2004.

In the new federal regulations, there are several major changes and revisions. First, the regulations raise the minimum salary level for exempt white collar employees to \$455 per week from \$155 per week. So, under the new rules, full-time workers earning \$23,660 or less are essentially guaranteed overtime, regardless of their job duties.

Second, the new rule amends the tests currently used to determine whether an individual is an exempt from overtime as an administrative, professional, or executive employee. The new regulation eliminates the cumbersome 20% limitation on non-exempt duties. Instead, the test takes the math out of the equation and now focuses on a more practical question: are the “primary duties” of the employee in question exempt duties?

Third, the regulations also establish for the first time a “salary cap” on overtime. Highly compensated employees performing office or non-manual work who are paid at least \$100,000 per year are exempt from the overtime requirements of the FLSA, even if they only perform one duty that is exempt.

Fourth, the new regulations also create a several categories of workers who will almost always be entitled to overtime. “Blue collar” workers, such as carpenters, electricians, laborers and other employees performing manual labor are now entitled to minimum wage and overtime pay regardless of how highly paid they may be. In addition, police officers, fire fighters, paramedics, EMTs and other similar crime or emergency workers are also basically guaranteed overtime when they perform their ordinary duties.

Despite this major overhaul of the federal regulations, New Jersey employers are only affected by two of the major changes. This is because the FLSA allows states to pass laws that are more protective of employees’ rights—and New Jersey has done so. The two primary changes that will impact New Jersey employers are: (1) the new \$23,660 annual minimum wage threshold, which is slightly higher than New Jersey’s existing rate of \$20,800; and (2) the new “blue collar” exclusions. All of the changes will affect employers in Pennsylvania and other surrounding states.

Labor & Employment Group Attorneys

Gary J. Lesneski, Chair

Frederick J. Rohloff

Neal L. Schonhaut

Joel Schneider

Peter L. Frattarelli

John P. Quirke

David A. Rapuano

Susan S. Hodges

Melissa Wheatcroft

Tracy A. Wolak

Melissa R. Lock

Stephanie G. Colman

Vanessa A. Worm

Sarah Middleton

The new regulations also provide several other changes that may impact specific industries or particular employment practices. For further information about the Fair Labor Standards Act and the FairPay rule, including how these may affect your business, please contact a member of the Labor and Employment Department at (856) 795-2121 or (908) 788-9700.