

ALERT

June 2016

Employment Law Alert

To supplement our April Alert, we take this opportunity to share with you information regarding the final changes to the wage-hour laws. Additionally, we summarize a recent amendment to the New York City Human Rights Law ("NYCHRL") that prohibits caregiver discrimination.

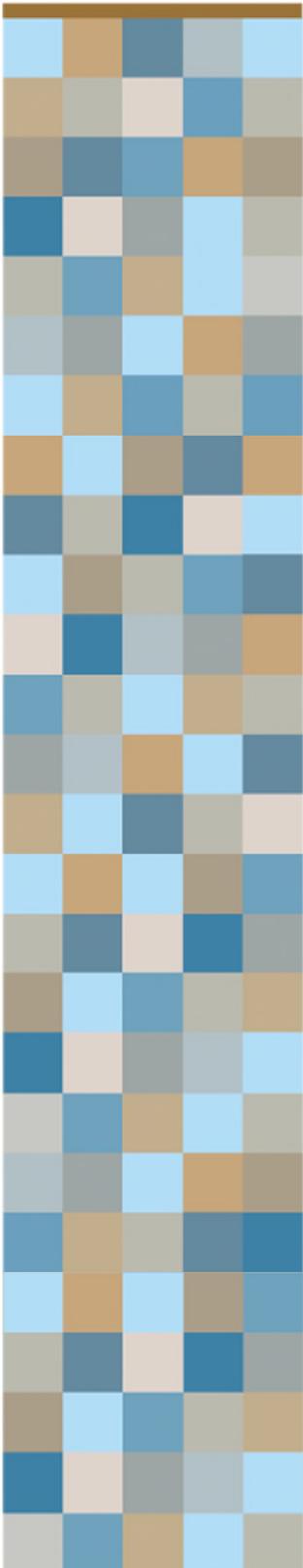
Final Rule Regarding the New Administrative Regulations to the Fair Labor Standards Act

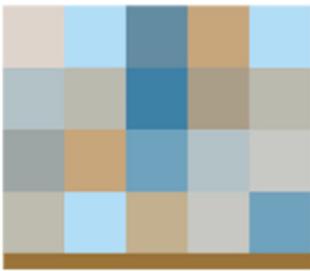
The United States Department of Labor ("DOL") recently issued its final rule regarding the changes to the white collar exemptions of the Fair Labor Standards Act. In response to concerns that the proposed rule would not account for lower salaries paid in particular Census Regions, the DOL has set the national standard salary level equal to the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region, the South, rather than basing it on national salary data. The salary level for highly compensated employees remains set at the 90th percentile of full-time salaried workers nationally.

- For an employee to be classified as exempt, the required employee must be paid a salary for 2016 of \$913 per week, or \$47,476 per year. Nondiscretionary bonuses, commissions, and incentive payments can constitute up to ten percent of the salary level, provided that such payments are made at least quarterly.
- To be classified as a highly compensated employee paid on a salary basis, the employee must be paid a salary of no less than \$134,004 per year for 2016.

The final rule will become effective on December 1, 2016, and required salary levels will be automatically updated every three years, beginning on January 1, 2020.

The final rule has prompted employer concerns regarding tracking and compensating employee hours logged electronically and off-site (through mobile devices and laptops), as such time will affect overtime for more employees given the raised salary levels. Because





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This Alert was written by A. Jonathan Trafimow.

Mr. Trafimow, a partner with the firm, heads the firm's employment practice where he represents employers in all areas of workplace discrimination, retaliation, harassment and civil rights claims, and class actions. He also routinely advises employers on compliance employment laws and regulations.

Caitlyn Ryan, a summer associate with the firm, assisted with the research and preparation of this Alert.

Any questions concerning the matters raised in the Alert should be addressed to Mr. Trafimow. He can be reached at (516) 873-2000 or by email at jtrafimow@moritthock.com

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the new rule is likely to increase the number of employees eligible for overtime, it has increased employer concerns regarding the tracking and payment of such hours.

New York City Human Rights Law Prohibits Caregiver Status Discrimination

Effective May 4, 2016, an amendment to the NYCHRL prohibits employers from discriminating against their employees on the basis of their status as a "caregiver," defined as "a person who provides direct and ongoing care" for a "minor child" (under eighteen) or "care recipient" (a disabled person who has either a familial relationship with the caregiver or resides in the caregiver's home, and relies on the caregiver to provide for his or her daily needs or medical care). Employers may not discriminate against such persons with respect to hiring, firing, compensation, and "terms, conditions or privileges of employment."

In contrast to some other NYCHRL provisions that require reasonable accommodations, the "caregiver" amendment imposes no such requirement on employers of caregivers. Not only is there no express reference to any such requirement, but the New York City Commission on Human Rights (the city agency that enforces the NYCHRL) explains that "[e]mployers do NOT have to offer accommodations to employees because of their caregiving responsibilities. For example, employers are not required to change an employee's shift or allow them to leave early just because they have caregiving responsibilities. Employers CANNOT, however, deny these benefits to employees with caregiving responsibilities if they provide these benefits to other employees." *See Protections for Workers with Caregiving Responsibilities*, NYC COMMISSION ON HUMAN RIGHTS (Apr. 26, 2016),

http://www.nyc.gov/html/cchr/downloads/pdf/materials/Caregiver_FactSheet-Employer.pdf

These changes will require many employers to update both their classifications of employees as exempt or non-exempt and their employment practices and policies. MH&H can assist you in understanding and addressing these issues, including reviewing and updating your policies.



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