DEPARTMENT OF LABOR MANAGER OVERTIME RULE

BACKGROUND

In March 2015, the Department of Labor (DOL) sent its proposed overtime rule to the Office of Management and Budget (OMB). The proposed rule would set forth three key proposed changes to the Fair Labor Standards Act (FLSA) regulations: (1) a raised minimum salary level to qualify for the white collar exemption standard salary-level test, which is set at the 40th percentile of weekly earning for full-time salaried workers. The DOL projects that in 2016, when the rule will likely take effect, the 40th percentile will be about $970 per week, or $50,440 annually. The current minimum salary that DOL requires for managers is $455 a week, or $23,600 a year; (2) a raised minimum total annual compensation requirement to qualify for the highly compensated exemption set at the 90th percentile of weekly earnings for full-time salaried workers. In 2013, this was $122,148 annually. The DOL does not propose what the amount will be in 2016; (3) a mechanism for annually updating the minimum salary and compensation levels for these exemptions going forward. Additionally, while DOL did not propose any specific modifications to the “duties tests” for determining which employees are executive, administrative, and professional, the Department suggested that it is contemplating imposing a “quantification” test so that employers would have to track exactly how much time an employee spends performing specific duties to qualify as exempt.

HOW THE RULE WILL AFFECT MARKETERS

Under the proposed rule changes, many employers would be faced with the possibility of reducing hours worked to 40 or less per work week, in order to avoid overtime pay. Management would need to be diligent in watching hours worked for those employees who do not meet the new salary requirements, or would be legally obligated to pay overtime pay at a rate of 1-1/2 times their normal rate of pay for all hours worked over 40.

Many retailers may choose not to have exempt employees in their businesses. By increasing the threshold for overtime-eligible employees, companies may be forced to cut bonuses and benefits to boost the managers’ base salaries and lower hourly rates to compensate for the expense of paying salaried managers more.

CONGRESSIONAL ACTION

In April, letters were sent to Secretary of Labor Thomas Perez relating to the DOL’s controversial overtime rule. The first was a bipartisan letter co-signed by 108 House members expressing their fierce opposition to the overtime rule. The second letter was from Congressman John Kline (R-MN), Chairman of the House Committee on Education and Workforce, and Congressman Tim Walberg (R-MI), Chairman of the Subcommittee on Workforce Protections. In the letter, the Congressmen request that the DOL provide them with stakeholder documents and stated the 60 day comment period originally offered by the Department was insufficient.

Meanwhile, Senator's Tim Scott (R-SC) and Lamar Alexander (R-TN) along with Congressmen Tim Walberg (R-MI) and John Kline (R-MN) recently proposed legislation to combat the proposed rule. The "Protecting Workplace Advancement and Opportunity Act" (S. 2707 and H.R. 4773) would require the DOL to consider the economic impact the rule would have on the business community.

"THE ASK"

Urge Senators to cosponsor S. 2707 and House lawmakers to cosponsor H.R. 4773.

PMAA STAFF CONTACTS: Sherri Stone, sstone@pmaa.org
Bradley Norman, bnorman@pmaa.org

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