



Responding To New FLSA Exemption Requirements Could Implicate Old South Carolina Law

Insights

11.17.16

The coming changes in the federal Fair Labor Standards Act's "white collar" exemption regulations (scheduled for December 1) leave many employers with essentially two options as to employees who now qualify for exempt status but whose present salaries will not meet the higher salary threshold:

- (1) Raise their salaries to at least the \$913-a-week threshold, or
- (2) Treat the employees as non-exempt going forward.

It is the second option that could trigger an obligation under South Carolina law.

As an illustration, assume that Jane works in South Carolina, is currently treated as an exempt "executive" employee under the FLSA, and is therefore paid on a salary basis. Her salary is \$800 a week, and up to now she has received her salary without regard to the number of hours she works in a workweek.

Her employer decides to convert her to non-exempt status under the FLSA and to pay her on a by-the-hour basis. Management decides to set her hourly rate at \$20 ($\$800 \div 40$). Unlike in the past, if Jane works fewer than 40 hours in a workweek in the future, she will be paid only for the hours she works, that is, she will not be paid \$800 for such a workweek. If Jane's employer does not alert her in advance about the change in her compensation, then this could run afoul of the South Carolina Payment of Wages Act.

What Does The Law Require?

Under that law, employers must give South Carolina employees notice of any changes to their wages (except for wage increases). Because in some situations Jane's new compensation plan will result in less pay than before, the law requires that her employer let her know this "in writing at least seven calendar days before" her new compensation method takes effect. S.C. Code § 41-10-30(A). If that effective date is December 1, then this means her employer must provide the necessary notice on or before November 23, 2016.

If Jane's employer fails to do this, she could sue to recover three times the difference between the lower wages she is paid under the new plan and the amount she would have been paid under the

former one. She could also recover her attorney's fees and costs. Furthermore, individual management members might be held personally liable for these amounts.

The Bottom Line

Adding South Carolina's law to the mix complicates an employer's preparations somewhat. However, with prompt forethought and planning, employers can make the necessary changes while still meeting the state's notice requirements.

The good news? There is still time — though not much — to avoid a costly misstep.

Editor's Note: Some other states also require advance notice of changes in an employee's compensation. South Carolina's prescribed period is among the shortest.