NEW YORK EMPLOYERS STILL FACE YEAR-END INCREASE FOR "WHITE COLLAR EXEMPTION" SALARY THRESHOLD

Insights
Dec 22, 2016

Lost in the shuffle surrounding the United States Department of Labor's (USDOL) proposed (but stalled) increases to the salary threshold for the "white collar exemptions" under the Fair Labor Standards Act (FLSA) was the New York State Department of Labor's (NYSDOL) proposed increases to the salary threshold for administrative and executive employees under the New York Labor Law (NYLL).

The NYSDOL's October 19, 2016 announcement of its proposed changes was not met with much urgency by New York employers at the time. However, the November 22, 2016 injunction issued by a federal judge in the Eastern District of Texas blocking the USDOL's new rules from going into effect has forced New York employers to focus on the NYSDOL's new rules much sooner than anticipated.

INCREASES FOR NEW YORK EMPLOYERS

The NYSDOL will be implementing increases to the salary threshold for administrative and executive employees on December 31, 2016, with yearly increases to follow thereafter through December 31, 2021, depending on the employer's location (New York sets no minimum salary threshold for professional employees). The threshold increases are largely proportional to the coming increases in the New York State minimum wage, which will reach $15 per hour in the coming years. As with the increases to the minimum wage, the increases to the salary threshold will be highest in New York City, slightly lower in Nassau, Suffolk,

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and Westchester counties, and lowest in the rest of the state.

SCHEDULE OF INCREASES

The schedule of increases is as follows:

- In New York City, larger employers (11 or more employees) will face increases over the next three years:

  - On December 31, 2016, the salary threshold will be $825 per week.

  - On December 31, 2017, the threshold will increase to $975 per week.

  - On December 31, 2018, the threshold will reach $1,125 per week.

- For smaller employers in New York City (10 or fewer employees), the increases will be stretched over a four-year period:

  - December 31, 2016: $787.50 per week

  - December 31, 2017: $900 per week

  - December 31, 2018: $1,012.50 per week

  - December 31, 2019: $1,125 per week

- Employers in Nassau, Suffolk, and Westchester Counties will have a six-year period to reach that same level:

  - December 31, 2016: $750 per week

  - December 31, 2017: $825 per week

  - December 31, 2018: $900 per week

  - December 31, 2019: $975 per week

  - December 31, 2020: $1,050 per week

  - December 31, 2021: $1,125 per week

- Finally, for employers elsewhere in New York State, increases will arrive over the next five years, although they will not reach the same levels as in New York City or the surrounding counties:

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- December 31, 2016: $727.50 per week

- December 31, 2017: $780 per week

- December 31, 2018: $832 per week

- December 31, 2019: $885 per week

- December 31, 2020: $937.50 per week

WHAT SHOULD NEW YORK EMPLOYERS DO NOW?

Although there has been no update from the NYSDOL since its December 3, 2016 deadline for the public to comment on the proposed rules, New York employers should be preparing to implement the necessary changes to ensure proper compliance given that the effective date is less than two weeks away. The good news for New York employers is that the NYSDOL's increases – set to go in effect on December 31, 2016 – are less than the proposed USDOL increase of $913 per week. Therefore, if New York employers were properly prepared to adjust to the USDOL's new $913 per week threshold as of December 1 (when those changes were set to go in to effect), they should already be more or less prepared to meet the NYSDOL's lower threshold.

However, the injunction that blocked the USDOL's rules from going into effect on December 1 could still impact how New York employers are able to comply with the NYSDOL's new rules. For example, the USDOL's proposed rule changes included new and helpful ways for employers to meet the weekly salary threshold, such as being able to use nondiscretionary bonuses and incentive payments to satisfy up to 10% of the salary threshold, which are not included in the NYSDOL's new rules. Because the NYLL tends to follow the FLSA in interpreting exemption issues, it is doubtful that New York employers will be able to use this employer-friendly aspect of the USDOL's enjoined rules unless or until the USDOL's rules actually go into effect (which, at this point, is largely an unknown).

Moreover, New York employers must determine how they will deal with employee classification issues with the yearly increases causing the NYSDOL's threshold to surpass the USDOL's proposed threshold by the end of 2017 (for larger employers in New York City), 2018 (for smaller employers in New York City), 2019 (for employers in Nassau, Suffolk, and

Westchester counties), or 2020 (for the rest of New York State). In addition, employers with locations in multiple counties in the state with different salary thresholds may have to decide whether to pay employees different salaries based on the different thresholds, or the same salary based on the higher threshold.

CONCLUSION

Although the Eastern District of Texas allowed those employers worried about changes to the "white collar exemptions" to breathe a sigh of relief, the NYSDOL made sure that any relaxation was short lived for New York employers.

For more information about how these changes will affect your workplace, contact any attorney in our New York City office at 212.899.9960, or your regular Fisher Phillips attorney.

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