

Michael Krucker: Hi thanks for joining us. I'm Michael Krucker and I'm here with Beth Colvin. We're from the employee benefits consulting practice here at Plante Moran. Today we'd like to cover some information as it relates to the changes to the overtime rules under the Fair Labor Standards Act. Particularly as it relates to the white collar exemption.

Beth Colvin: Thank you Michael. So to begin we're going to cover what the Fair Labor Standards Act provides, so we can see where it's begun and where it has progressed to. The Fair Labor Standards Act provides overtime and minimum wage protection to employees. The current minimum wage for the federal rate is 7.25 an hour but a state may have a higher minimum wage that must be followed. As many of you know, overtime is owed for any time that an employee works over 40 hours in a work week. An employee can be covered under the act, under enterprise coverage and individual coverage. Enterprise coverage comes in if a business or organization has \$500,000 or more in revenue annually but if that doesn't apply, an individual still may be covered under specific circumstances. The Fair Labor Standards Act applies to an employee unless there is a specific exemption in play. The three exemptions that we generally see under the white collar exemptions are the executive, administrative and professional exemptions. The executive exemption applies mainly to individuals that run an organization or run a specific department, they oversee the hiring, firing and promotion of at least two employees. While the administrative exemption applies to individuals that run the company behind the scenes or assist the company's clients. So this could be departments such as marketing or human resources. Finally, the professional exemption applies to those that have advanced knowledge and learning, and use this in their day to day job.

Michael Krucker: So how do you determine whether an employee meet the exemption under the white collar exemptions? To determine this you have to look at a three part test. The first part of the test is the duties test. This is what Beth Just went over as far as the types of work that the employee does. Typically, where we see most people falling under the duties test is in the professional, the administrative or the executive duties. However, as Beth mentioned, there are several other duties that might meet this exemption. Assuming that the employees duties, again we're looking not just at their job description as written down but at the duties that they're actually performing, assuming that they meet the requirements under the rules, then you'd move on to the next test.

The next test is how are they paid? Here we look at two things. One is, are they hourly employee or are they salaried employee? Then second is, how much are they making? So an hourly basis employee, if the employee you're looking at is an hourly basis, they would be considered not exempt and would be required to pay overtime regardless of how much they're making. However, if the employee is paid on a salary basis they may still be eligible for the exemption. That's when we'd look at how much are they making? So currently, under the current rules, if an employee makes just over \$23,000 a year on a salaried basis, they could be considered an exempt employee as long as they meet the other test, the duties

test. Of course, this threshold's changing. That's why we're here today. Beth will go over that in a minute but the idea with these tests is that it's not a one part test or if you pass one, you pass all. In order to be considered exempt you have to pass all three tests. That is the duties must be in line with the exemption, they have to be paid on a salary basis, and their salary has to meet at least the minimum threshold.

Beth Colvin:

The change that's coming mainly affects the salary level threshold. So currently, an employee must make at least \$455 a week, which comes out to \$23,660 annually. But effect of December 1st the employee must make at least \$913 a week or approximately \$47,476 annually. In addition, the Department of Labor listened to the numerous comments and has opted to allow employers to include bonuses in meeting the salary level threshold. Now, these bonuses must be of a non-discretionary sort and they must be paid on a quarterly or more basis. In addition, there is a limit as to how much an employer can include from a bonus and this is set at 10% of the threshold, so about \$4700 can be counted toward the threshold from a bonus that's given. The Department of Labor has also released that the salary level is tied to the 40th percentile of full-time salaried workers in the lowest wage census region, which is currently in the south. The department has said that they will increase the level every three years and will provide notice to employers at least 150 days in advance, and this will be published in the federal register and released on the Department of Labor's website.

Michael Krucker:

So on implementing these rules there are a number of things that employers should consider. The first consideration is going to be the financial implication of the change. So, as these rules came out the information that was coming out of the government and many of the news outlets kind of led people to believe that this would likely result in an increase in pay for, four and a half million I think, was the number of employees across the country. So as we've seen our clients start to implement these changes and to determine how to implement the changes, what we've found is that most likely employers are not going to be looking to increase people's pay, not going to be looking to pay them a salary plus overtime, but rather they be looking to determine a way to change. Whether it's their duties that change, whether it's their work schedules that change, or the way that they're paid that changes, in order to keep employees relatively level as it relates to pay.

Beth Colvin:

That's a great point. In addition to financial considerations, employers must consider the cultural impact that these changes will have. Many employees have been with companies and have been on a salary basis for years, and they may require their duties to change or the way that they are paid to be changed. So someone could go from a salary to an hourly pay and this may affect their work. Some may view this as a demotion so it's really important for the employer to assess what kind of culture they have and how their employees are being paid, and what this means to the employees. In addition, if you have a set group of employees that change from salary to hourly, while their peers may not be paid on an hourly basis, this could have an impact as well. It's important for the

employer to communicate to the employees that this isn't a demotion and that it is required under federal law. In addition, employers may want to monitor the implications that this has for employees working off hours or working after their normal work day ends. So if someone's used to answering emails but their switching to an hourly position, the employer may have to explain to the employee that this needs to stop, or that they must report that time because the employee must be paid for all hours worked and so it's very important to track that time.

Michael Krucker:

So tracking time, this is a big issue. This is something that I might not have expected. As these rules came out, as far as the impact they would really have on the market. What we've heard from a number of clients is that in a lot of situations, a lot of industries, hours just aren't tracked for employees that are currently considered exempt. So, we've got a number of employers out there who are salaried employees who currently meet the \$23,000 threshold, that won't meet the \$47,000 threshold but have never tracked hours and there are no systems in place, or processes in place to track those hours. So I think this is something that, once you get beyond the cultural aspects of these changes once you get beyond the financial aspects of these changes, just from an administrative perspective, tracking hours is going to become one of the most important changes that an employer is going to have to make.

Beth you mentioned off hours working. So in so many situations we would have employers that have in place, working at night, maybe have to respond to an email, maybe they have to check schedules or do something along those lines. If that person is being paid on an hourly basis now, or being paid overtime to work from home, it becomes a lot more important to the employer to be able to track that time accurately and fairly so that they're compensating the employee fairly but they're not compensating them for overtime that maybe they're not working efficiently or they're not fully working, if you will. So I think that this is an area that a lot of employers, it may sneak up on you. If you're one of those companies that does not track hours for your salaried employees, it's definitely something that you should consider implementing some sort of process to track those hours.

So when are these rules effective? The current effective date is December 1st 2016. There have been a lot of rumors circulating, that the congress is going to step in or that the courts were going to step in to delay the effective date. At this point we do not expect any delay. We're about a month out currently and so this, I would say that by December 1st you should have a plan to implement these changes, to make sure that you're paying people appropriately under the rules. So thanks for joining us. For more information you can go to [plantemoran.com](http://plantemoran.com) and search white collar exemption. Thanks.