

Labor Law Bulletin

Labor and employment law trends of interest to our clients and other friends.

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ILLINOIS AMENDS STATE WAGE LAW TO TRUMP ANTICIPATED FLSA REGULATIONS

Even before the U.S. Department of Labor (DOL) issues final regulations redefining the so-called white-collar exemptions, the State of Illinois has passed a law designed to supersede those regulations and retain the current exemptions for Illinois employees. (Public Act 93-0672).

The Fair Labor Standards Act (FLSA) requires an employer to pay employees overtime for working more than 40 hours in a workweek unless the employee falls within an exemption for executive, administrative or professional employees. The regulatory definition of these three categories has not changed significantly in the last fifty years.

A major DOL initiative has been undertaken to redefine the exemption. However, that process has become a political issue, with Democratic Congressional opponents claiming that the DOL's proposed regulations will exempt eight million employees from overtime pay eligibility. Despite this opposition, it appears that final regulations will issue shortly.

Signing state legislation championed by state Senator (and Democratic U.S. Senate candidate) Barack Obama, Governor Rod Blagojevich proudly announced that Illinois became the first state to pass a law rejecting the new DOL regulations and retaining the current exemptions. Under the new legislation signed April 2, 2004, the Illinois

Minimum Wage Law has been amended to apply the DOL exemptions in effect on March 30, 2003 (the day before the DOL published the proposed changes to the exemptions) to Illinois employees. The new Illinois law also raises the overtime eligibility level so that most employees who earn less than \$425 a week, or \$22,100 a year, will be eligible for overtime. The previous limit was \$155 a week. When and if the new DOL exemptions take effect, employers will be required to apply the "old" exemptions to employees working in Illinois because federal law allows states to enact wage and hour laws more generous than federal law.

For employers having multi-state operations, this means that employees performing the same job and earning the same salary may be owed overtime if they work in Illinois but not if they work in another state. Although Illinois is the first state to take this step, it may not be the last. California is considering making similar changes to its wage and hour laws.

Last month the DOL finished revisions to the FLSA regulations and forwarded them to the Office of Management and Budget for review. We expect the final regulations to be published within the next few weeks. Vedder Price will continue to provide analysis and guidance on this issue.

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