

## **LEGAL ALERT (Posted 7/2/15) – New, Proposed Revisions to Overtime Exemption Regulations are Published/New York City Enacts “Ban the Box” Law**

The U.S. Department of Labor has finally unveiled their proposed revisions to the Fair Labor Standards Act’s overtime exemption regulations. While the DOL publication announcing and explaining the changes and methodology is very long (295 pages) the actual changes are short and affect primarily the salary level for exempt employees:

- The proposal calls for raising the salary level of exempt employees to approximately \$970 per week, or \$50,440 annually, in 2016. The salary is intended to equal the 40th percentile of weekly earnings for full-time, salaried workers.
- The salary level for the highly compensated exemption will also rise to \$122,148 (equating to the 90th percentile of weekly earnings for full-time, salaried workers).
- The DOL is also proposing to automatically update the salary thresholds annually.
- Significantly, the DOL did **not** make any proposed changes to the duties requirements of the exemptions yet. However, the DOL is soliciting comments as to whether changes should be made, including adoption of the California rule that 50% of the employee’s job duties be spent exclusively on exempt tasks.
- The comment period will be 60 days, and then it could be a few months after that before the final regulations are issued and become effective. So the revisions may not become final until the end of the year.

In addition, earlier this week New York City Mayor Bill de Blasio signed the “Fair Chance Act” into law. The ordinance restricts when employer inquiries about applicants’ criminal histories may be made during the application process and imposes significant obligations on employers who intend to take action based on such information.

The ordinance will become effective on October 27<sup>th</sup>, 2015, 120 days after receiving Mayor Bill de Blasio’s signature.

Like other ban-the-box laws, the ordinance generally prohibits an employer with at least four employees from making an inquiry about an applicant’s pending arrest or criminal conviction record until after a conditional offer of employment has been extended. Limited exceptions are provided.

Under the ordinance’s definition of inquiry, employers are prohibited not only from asking an applicant prohibited questions — verbally or in writing — but also are prohibited from searching publicly available sources to obtain information about an applicant’s criminal history.

Employers who make inquiries into an applicant's criminal history after a conditional offer of employment has been extended and determine that the information warrants an adverse employment action must follow a rigorous process. Specifically, employers must:

1. Provide the applicant with a "written copy of the inquiry" which complies with the City's Commission on Human Rights required (but not-yet-issued) format;
2. Perform the analysis required by Article 23(a) of the New York Correction Law, "Licensure and Employment of Persons Previously Convicted of One or More Criminal Offenses";
3. Provide the applicant with a copy of its analysis, also in a manner which complies with the Commission's required format, which includes supporting documents and an explanation of the employer's decision to take an adverse employment action; and
4. Allow the applicant at least three business days to respond to the written analysis by holding the position open during this time.

If you have any questions about these or other workplace issues, please contact the following Jackson Lewis P.C. Attorneys:

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