Fair Labor Standards Act and Illinois Statutory Changes

New Overtime Rules
New Illinois Law for 2017

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Overview

• History
• Coverage
• Exempt vs. non-exempt
Exempt (Salary*) vs. Non-Exempt (Hourly*)

• Explanation
Exempt - Exemptions

- EAP
- HCE
- Computer employees
- Outside sales
Executive Exemptions

• Salary
• Primary duty
• Direction of employees
• Authority to hire or fire
Administrative Exemption

- Office or non-manual work
- Exercises discretion and independent judgment
Learned Professional Exemption

- Work requiring specialized intellectual instruction
- Predominantly intellectually in character
Creative Professional Exemption

• Work requiring invention, imagination, originality or talent
Highly Compensated Employees

• Must be office or non-manual work
• Salary
Computer Employee Exemption

• Compensated either on a salary or fee basis
• Computer system analysis, computer programmer, software engineer or similar
• Primary duty application of system analysis or design
Outside Sales Exemption

• Primary duty making sales or obtaining orders or contracts for services
• Customarily and regularly engaged away from the employer’s place or places of business
Salary Test

• $913 per week (previously $455 per week)
• Annual salary ($47,476) based on 40th percentile of full-time salaried workers in the lowest wage Census region
• However, an employee’s exemption status is always determined on a work week basis
Bonuses

• Non-discretionary bonuses count toward the standard salary level
• Must be paid quarterly or more frequently
Highly Compensated Employees (HCE)

- 90th percentile of earnings of full-time salaried workers nationally ($134,000)
- Must earn at least $913 per week
- Must still perform exempt duties on a “customary and regular” basis
- Computer professional exemption
- Hourly salary $27.63
- Weekly standard salary $913 per week
Outside Sales Exemption

- Employees are not subject to the salary basis or salary level requirements
Additional Exemption from Salary Requirement

• Licensed or certified doctors, lawyers and teachers

• Academic administrative employees in an “educational establishment”
Options for Dealing with Non-Exempt Employees

• Increased salary of an employee who meets the duties test
• Pay overtime premium for overtime hours worked
• Reduce or eliminate overtime hours
• Reduce the amount of pay allocated to base salary
• Use combination of these responses
Employee Sick Leave Act

• Act takes effect January 1, 2017
• Covers all employers who currently provide “personal sick leave benefits”
“Personal Sick Leave Benefits”

• Time accrued and available to an employee
• Used as a result of an absence from work due to illness, injury or medical appointment
• Does not include absences from work for which compensation is provided (disability)
Expanded Use of Sick Leave

- Employee may use sick leave for:
  - Child
  - Spouse
  - Sibling
  - Parent
  - Mother-in-law, father-in-law
  - Grandchild, grandparent or step-parent
Limitation

• May limit leave for relatives to the six months accrual
FMLA

• This Act does not extend the maximum period of leave to which an employee is entitled to under the Family and Medical Leave Act
Retaliation Prohibited

• Complaints filed with the Illinois Department of Labor
Illinois Freedom to Work Act

- Takes effect January 1, 2017
- Applies to all employers in Illinois
“Covenant not to Compete”

• Restriction from performing:
  (A) Any work for another employer for a specified period of time;
  (B) Any work in a specific geographic area; or
  (C) Work for another employer that is similar to the work of an employee
“Low-Wage Employee”

• $13.00 per hour or less in Illinois
• Should the minimum wage in Illinois (currently $8.25, $10.50 per hour in Chicago) increase
“Exemptions”

• Applies to all employers
• Does not apply to governmental or quasi-governmental bodies
Issues under Illinois Freedom to Work Act

- Solicitation of clients or customers
- Solicitation of employees
- Use of confidential information
Child Bereavement Leave Act

• Act took effect on July 29, 2016
• Covers employers and eligible employees as those terms are defined by the federal Family and Medical Leave Act ("FMLA")
Benefits

• All employees are entitled to a maximum of ten workdays of unpaid leave to attend a child’s funeral; or
• To make arrangements necessitated by the death of a child; or
• Grieve the death of the child
Extended Leave

• Death of more than one child during a twelve-month period
• Six weeks’ unpaid leave
“Child”

- Son or daughter who is a biological, adopted, foster, or step-child
- Legal ward
- Child of a person standing in *loco parentis*
- Age of child does not matter
Use of other Benefits

• Employee may substitute existing paid or unpaid leave to which they are entitled
• Does not create a right for an employee to take unpaid leave that exceeds time allowed by FMLA
Notice and Documentation

• 48 hours’ advance notice unless unreasonable
• Reasonable documentation may be required:
  (1) A death certificate
  (2) Published obituary
  (3) Written verification from funeral home or church
Retaliation

• Any violation may be reported by the employee within 60 days of the most recent event
• First employer offense penalty not to exceed $500.00
• Second or subsequent offense a penalty of up to $1,000.00
Amendments

- Freedom from Location Surveillance Act
- Victims’ Economic Security and Safety Act
- State Construction Minority and Female Building Trades Act