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Invitation to Join Coalition on Overtime Rule

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The DOL overtime rule is back on the table. The Trump administration issued a media release on July 25, 2017 asking employers and others to respond to a variety of exemption-related questions. We are recruiting clients to participate in a joint effort to present a unified, pro-employer voice on this very important set of regulations. Details:

STATUS OF OVERTIME RULE: On June 30, 2017, the U.S. Department of Labor (DOL) filed a reply brief in support of its appeal of the nationwide injunction of the DOL's revised overtime rule. Set to take effect on December 1, 2016, the new overtime rule would raise the minimum salary level for the executive, administrative, and professional exemptions from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476 per year). Before the rule could go into effect, however, a federal district judge in Texas issued an order stopping implementation of the rule nationwide. The judge's order suggested that the DOL lacks the authority to set any minimum salary level for the so-called white-collar exemptions under the Fair Labor Standards Act (FLSA). Last December, the DOL under the Obama Administration appealed that order to the Fifth Circuit Court of Appeals, seeking to overturn the injunction.

After the Trump Administration took over in January, it became unclear whether DOL would continue with its appeal or would withdraw the appeal, essentially allowing the injunction to stand. As explained in its June 30th reply brief, the DOL is continuing with the appeal, arguing that the DOL does indeed have the authority to set a minimum salary threshold for the exemptions. The DOL, however, wrote that it has "decided not to advocate for the specific salary level (\$913 per week) set in the final rule at this time and intends to undertake further rulemaking to determine what the salary level should be."

On July 25, 2017, the DOL announced that it was publishing a Request for Information (RFI) to seek public comment on the overtime rule, including what the appropriate salary level should be, whether a duties test should apply, and other important information that will be used to propose a new rule.

INVITATION TO JOIN A COALITION: To address employer concerns related to the 2016 overtime rule and its \$47,476 per year salary minimum for the white-collar exemptions, we believe it is imperative that employers act quickly to weigh in on the questions posed by the DOL in its RFI. In particular, we believe our clients and other interested parties should voice an opinion on what the appropriate salary level should be, whether a duties test (long and short test) should apply, whether non-discretionary

bonuses and incentive payments should be included in the standard salary level, how the salary level for highly compensated employees should be set, and how periodic updates to the salary levels should occur.

Our team of motivated employment attorneys and legislative affairs folks can quickly bring together a coalition of interested parties, develop a strategy of influence, and formulate a unified response to the RFI to assure that the concerns of our clients are heard and understood. We have just 60 days to respond to the RFI so we want to move fast. There is a lot at stake, as the RFI will be used by the DOL to formulate a new exemption rule that will fundamentally change how business is done and how workers are paid nationwide.

A coalition of interested clients will co-fund this RFI response effort in order to cohesively influence this major shift in wage policy in a targeted and cost-effective manner. Our best estimate is that this will cost between \$1,250 and \$2,500 per client—based on the number who join the coalition. This work will be done with continuous communication with the clients. **We likely need to move forward immediately, so please let us know as soon as possible if you want to be part of the Coalition. Contact Bryan Benard or the Holland & Hart attorney with whom you typically work.**

THE TEAM: Holland & Hart will combine legal expertise in employment law with its Legislative Affairs practice group to provide a full-service information-gathering and lobbying component with the DOL. Our employment attorneys vigorously represent employers nationwide on wage and hour issues, and understand the importance of advancing our client's objectives when rulemaking by the DOL occurs. Our legislative affairs practice group combines political savvy with outstanding relationships and legal experience, making us extremely effective in representing our client's interests.



Bryan Benard has nearly 20 years of experience representing employers in all labor and employment issues in Utah and California. Bryan regularly represents both private and public clients in wrongful termination, harassment, and discrimination claims in both federal and state courts, as well as in administrative proceedings before federal and state agencies. He provides sound counsel to clients regarding employee relations, employee contracts, wage and hour, and employee handbooks, with extensive background with non-compete and non-solicitation provisions. Bryan has served on his firm's firm-wide management committee and currently is the practice group leader for Holland & Hart's Labor and Employment Practice Group firm-wide.



Brad Cave works with family businesses, non-profit organizations, large and small companies, and public entities in the healthcare, human services, education, mining, oil and gas, and construction industries on a wide array of employment compliance matters and disputes. Brad currently serves on the firm's Management

Committee. He previously served as the practice group leader for the firm's labor and employment practice.



Steve Gutierrez advises employers on how to attract, incentivize, and retain talent and helps his clients effectively handle the varied challenges of the modern employment relationship. His focus is to be practical and cost-effective. Steve has also developed proven solutions that help clients maintain compliance with federal and state laws. Steve's day-to-day counseling and world-class training for managers, supervisors, and HR professionals on policies and best practices is essential to manage risk in the modern workplace.

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