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October 27, 2016

RE: 2016 Department of Labor Fair Standards Labor Act Overtime Rule

Dear Client:

Effective December 1, 2016, the Department of Labor updated its regulations for determining whether white collar salaried employees are exempt from the Fair Labor Standards Act's (FLSA) minimum wage and overtime pay protections. **It is important to note that certain employees such as doctors, lawyers, and teachers are not subject to these rules and these new rules do not apply to any employees that are paid hourly.** In order to assist with applying this new rule to your business, following is some information that should be helpful to you.

What employers are covered by the FLSA?

- A Federal, state, or local government agency
- A hospital, or an institution primarily engaged in the care of the sick, the aged, or the mentally ill or mentally retarded who live on the premises
- A pre-school; elementary or secondary school or institution of higher learning (e.g., college); or a school for mentally or physically handicapped or gifted
- A company/organization with annual dollar volume of sales or receipts in the amount of \$500,000 or more.
- The Overtime Rule applies to the non-profit sector effective December 1, 2016 if the non-profit entity has \$500,000 or more of activities that are performed for business purposes (such as a gift shop). It does not apply to the organization's charitable activities that are not in substantial competition with other business. Income from contributions, membership fees, many dues, and donations used for charitable activities are not counted toward the \$500,000 threshold.
- If an employer doesn't meet one of the above requirements but has any employees involved in interstate commerce, those employees are covered by the FLSA.

How is the \$500,000 of annual dollar volume of sales or receipts determined?

- Annual dollar volume of sales made or receipts of an enterprise consists of the gross receipts from all types of sales made and business done during a 12 month period. The computation of the annual gross volume of sales or business of the enterprise is made exclusive of excise taxes at the retail level which are separately stated.
- It is possible that some enterprises will have annual dollar volume of sales or receipts which fluctuates above and below the \$500,000 test. In this situation, the employer must use the last 4 completed quarters to determine coverage for the current quarter. Accordingly, enterprise coverage could exist for one quarter and not the next quarter.

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What is Overtime?

- Unless specifically exempted, employees covered by the FLSA must receive pay for hours worked in excess of 40 hours in a workweek at a rate not less than one and one-half their regular rate of pay.

What are the White Collar Exemptions to avoid paying overtime?

- A white collar employee must be salaried (paid a predetermined and fixed salary);
- Be paid more than \$913 per week (\$47,476 annually); and
- Primarily perform executive, administrative, or professional duties, as defined in the Department's regulations. White collar job duties have been expanded to include the performance of office or non-manual work directly related to the management or general business operations.

How can employers implement the updated salary level requirement in the Overtime Rule?

- Increase the salary of the employee to \$913 per week or \$47,476 annually; or,
- Pay an overtime premium of one and half times the employee's regular rate of pay for any overtime hours worked; or,
- Reduce or eliminate overtime hours; or,
- Reduce the amount of pay allocated to base salary (provided that the employee still earns at least the applicable hourly minimum wage) and add pay to account for overtime for hours worked over 40 hours in the workweek, to hold total weekly pay constant; or,
- Use some combination of these responses.

May employers use bonuses to satisfy part of the new standard salary level test?

- The Department of Labor now allows nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the standard salary test requirement. Such bonuses include nondiscretionary incentive bonuses tied to productivity or profitability. For employers to credit these bonuses and incentive payments toward a portion of the standard salary level test, such payments must be paid on a quarterly or more frequent basis.

Additional information about the Overtime Rule:

- Private employers may not use compensatory time (comp time) instead of overtime pay.
- The standard salary rate (currently \$913 per week or \$47,476 annually) will automatically be updated every three years with the first update taking effect on January 1, 2020.

We look forward to discussing these changes with you on an individual basis. Please contact your Widmer Roel professional to discuss how these changes affect your business and what actions need to be taken to conform to the 2016 Overtime Rule. Please visit our website widmerroelcpa.com for more information from the Department of Labor regarding the Overtime Rule.

Sincerely,
Widmer Roel PC