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New Overtime Rules to Impact Higher Education

HIGHER EDUCATION, NOT-FOR-PROFIT, TAX
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On May 18, 2016, the Department of Labor ("DOL") issued its expected final overtime pay rules of the Fair Labor Standards Act ("FLSA"), which will go into effect on December 1, 2016. Essentially, the rules require that employees earning less than \$47,476 per year will automatically qualify for overtime pay of time and a half, if they work more than 40 hours in a week. The new threshold is significantly higher than the current threshold of \$23,660.

The new rules are expected to have a significant impact to the higher education sector; however, while the new rules extend overtime protections, existing FLSA exemption provisions may preclude overtime eligibility. In regards to higher education, the following classifications may be exempt from the overtime rules:

Bona fide teachers – Teachers are not subject to the salary-level requirement. Teachers are exempt if their primary duty is teaching, tutoring, instructing, or lecturing, and can include professors, adjunct instructors and teachers of skilled or semi-skilled trades and occupations.

Coaches – Athletic coaches and assistant coaches may fall under the exemption if their primary duty is teaching, which may include instructing athletes in how to perform their sport. If their duties primarily include recruiting athletes performing manual labor, they are not considered teachers. A coach who primarily is responsible for instructing athletes, but also spends some time recruiting or doing manual labor could still be considered ineligible for overtime.

Graduate and undergraduate students – Generally, the DOL views graduate and undergraduate students who are engaged in research under a faculty member's supervision in obtaining a degree to be in an educational relationship and not an employment relationship. As such, they would not be subject to the overtime rules.

Academic administration personnel – The administrative personnel who help run institutions of higher education and who interact with students outside the classroom, such as department heads, counselors and advisors, and intervention specialists are subject to a special salary threshold that does not apply to white-collar employees outside of higher education. These employees will be exempt if they are at least paid as much as the entrance salary for teachers at their institution.

Despite the exemptions, the rules are still expected to have a significant impact on the higher education sector, particularly on postdoctoral researchers who do not

have a role in teaching, non-academic administrative employees and other salaried workers who do not meet the minimum salary requirements. Institutions of higher education need to have a plan in place to prepare for these changes. Overtime policies will need to be revisited, including overtime approval processes. Employee responsibilities and pay grades will need to be evaluated as well as assessing budget impact. These changes should not be viewed as a year-end planning exercise.

A Department of Labor summary on the impact to the higher education sector can be found here: <https://www.dol.gov/sites/default/files/overtime-highereducation.pdf>

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