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Exempt Status Determinations Made More Difficult for Illinois Employers

While the United States Department of Labor has been preparing its final regulations revising the definitions of who can be exempt from overtime pay under the federal Fair Labor Standards Act for the first time in more than 50 years, the Illinois legislature on March 31, 2004 passed a bill amending the state's Minimum Wage Law (which governs overtime pay as well) in several respects. The Governor signed the bill on April 2, 2004.

The bill redefines the definitions of exempt executive, administrative, and professional employees. Illinois law governing overtime has provided that the definitions of exempt executive, administrative, and professional employees under Illinois' overtime law are the same as those adopted by the Department of Labor under federal law. Thus, as the regulations governing who may be exempt from the FLSA's overtime requirements change (as expected in the next 90 days), Illinois law would change automatically as well. Under the bill, however, the definitions of exempt executive, administrative, and professional employees would be largely the same as those defined by the Department of Labor *as of March 30, 2003* – the day *before* the Department of Labor first issued its proposed revisions to its exempt status regulations.

This means that Illinois employers would have to ensure that they have correctly classified employees as exempt under both Illinois law (incorporating the regulations in effect from 1950 through 2003) *and* federal law (under the regulations expected to be issued shortly). The Illinois legislature has enacted this bill without seeing the Department of Labor's final regulations, which likely will contain differences from the revisions it proposed more than a year ago before encountering political opposition from unions and employee advocates.

The bill also applies to the state's overtime law for the first time to government employees (with the exception of the much of the staff of elected officials). This means that public employers now will

have to become aware of several pockets of wage-hour law where the federal government provides an overtime exemption for certain workers (under which public employers currently do not pay have to pay overtime), but the Illinois law does not contain the same exemption (and thus the employees now will have to receive overtime).

All Illinois employers, and especially in the public sector, now will have to ensure compliance with two different sets of exemptions. In addition, it is likely that those who challenge their exempt status classification, or some other pay practice, are far more likely to do so under the Illinois overtime law rather than under the FLSA. Those cases can be brought in state rather than federal court, and can be styled as traditional class actions, in which all similarly situated employees are automatically a part of the case unless they affirmatively opt *out* of the case, rather than as FLSA collective actions, in which employees are not a part of the case unless they affirmatively opt *in* to the case. This will have the effect of making wage-hour cases larger and more expensive.

Seyfarth Shaw will continue to advise you on new federal and state developments on exempt status and continues to prepare an extensive exempt status review program to assist employers in compliance amidst the new exempt status landscape upon the issuance of the new federal regulations.

If you have any questions or would like additional information, please contact your Seyfarth Shaw attorney or send an e-mail to seyfarthshaw@seyfarth.com.

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