

# Client Alert **Employment & Labor**

## *New Jersey Adopts Federal Regulations Regarding “White Collar” Overtime Exemptions*

The New Jersey Department of Labor and Workforce Development (“NJDOL”) has recently announced that it is finally adopting the requirements set forth in federal regulations regarding “white collar” overtime exemptions, which apply to certain administrative, executive, professional, outside sales, and information technology employees. These changes will eliminate inconsistencies between the state and federal regulatory schemes that have long troubled employers throughout the state.

In order to properly classify an employee as exempt under the prior state regulations, an employer had to show, among other things, that an employee dedicated at least 80 percent of his or her workweek to the performance of exempt tasks. The new regulations make state law consistent with federal regulations by eliminating this percentage analysis, and instead adopting the federal “duties and salary basis” test for determining whether an employee is exempt. To qualify for the “white collar” exemptions under the new regulations, New Jersey employers can now demonstrate that an employee’s “principal, main, major or most important duty” is the performance of exempt work. In addition, the NJDOL has adopted the “super salary” test for executive, administrative and professional employees who earn \$100,000 or more per year.

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When making this change, the NJDOL inadvertently eliminated the commissioned sales exemption, often referred to as the “inside sales” or “retail sales” exemption. Under the prior state regulations, inside commissioned sales employees were included among the “white collar” overtime exemptions. That is no longer the case under the revised regulations, because under federal law, the exemption exists, but is codified in a different section of the regulation. Clearly this was an oversight, however, until the NJDOL corrects the error, plaintiffs’ lawyers may argue that inside commissioned sales employees must be considered non-exempt, and are entitled to overtime just like any other non-exempt employee. As any new changes to the regulation will be subject to the state’s formal rulemaking procedure, New Jersey employers will be faced with potential repercussions of this inadvertent change for the foreseeable future.

### Action Points

With the exception of the “inside sales” issue, these long overdue changes are welcome, especially in light of the fact that the NJDOL and the Federal DOL have ramped up their efforts in investigating companies in the wage and hour area, and have been assessing large penalties for classification violations in quite a number of industries. The DOL has been far more lenient with respect to penalties when employers come forward with violations and correct them on a going forward basis.

New Jersey employers should:

- Engage in a review of all job descriptions of both exempt and non-exempt employees to ensure general compliance with the classification regulations.
- Engage in a self audit of overtime practices as they relate to classification issues.
- Review certain non-exempt positions to determine whether they meet the exemption under the new standards.
- Assess whether inside sales people should temporarily be treated as non-exempt employees.

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For additional information concerning the new regulations or for assistance in conducting wage and hour self-audits, please feel free to contact the following attorneys from our Employment and Labor Practice Group.

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