

Policy Alert

May 24, 2016

If you read one thing...

- The new overtime rule issued by the Obama administration may impact a corporation's "restricted class" for Political Action Committee (PAC) solicitation purposes.



Obama Administration's New Labor Rule May Impact Corporate Political Action Committees

On May 18, 2016, the U.S. Department of Labor (DOL) **finalized** a new rule that modifies who is "exempt" from the Fair Labor Standards Act (FLSA) minimum wage and overtime pay requirements. Corporations with Political Action Committees (PAC) are limited in whom they may solicit, and most corporations do not solicit overtime-eligible employees. Under the new DOL rule, those who earn less than \$47,476 a year will now automatically qualify for overtime pay of time-and-a-half for all time worked over 40 hours a week. Previously, the threshold for required overtime had been capped at \$23,660. The new rule, which goes into effect on December 1, 2016, is projected to affect approximately 4.2 million American workers.

The Federal Election Campaign Act and Federal Election Commission regulations govern who may be solicited by corporate PACs. Employees who qualify as the "restricted class" may be solicited at any time, and the FLSA provides guidance in determining whether individuals have the requisite job responsibilities to be included.

Members of a corporation's "restricted class" generally include the following:

- the company's salaried executives and administrative personnel, who exercise policymaking, managerial, professional or supervisory responsibilities
- salaried employees who follow recognized professions (i.e., attorneys, engineers)
- shareholders
- compensated members of the board
- the families of these individuals.

While the FLSA regulations are not used to determine the definition of the solicitable class of employees, the FLSA serves as a guideline to determine whether an individual possesses policymaking, managerial, professional or supervisory responsibilities. Traditionally, corporations have not included nonexempt employees in the “restricted class” because overtime-eligible employees generally do not exercise policymaking, managerial, professional or supervisory responsibilities. If corporations continue to consider nonexempt employees as being outside the “restricted class,” the new DOL rule may reduce the number of employees who can be solicited for the PAC.

Additionally, some corporations may respond to the new DOL rule by converting affected employees from “salaried” to “hourly” compensation. As noted above, in order to be considered part of a corporation’s “restricted class,” an employee must be paid on a salaried basis. Any conversion to hourly status, regardless of the employee’s responsibilities, will preclude solicitations for contributions to the PAC from those employees.

In light of the new DOL rule, corporations should review their “restricted class” to ensure that they are complying with federal campaign finance laws, keeping in mind that employees must be paid on a salaried basis and exercise certain responsibilities to be solicited for the corporate PAC.

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