Although Presidential Election Creates Questions About FLSA Regulations, Employers Who Ignore December 1 Effective Date Do So At Their Own Peril

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Effective December 1, 2016, pursuant to new Fair Labor Standards Act (FLSA) regulations adopted by the U.S. Department of Labor (DOL), the salary threshold for many salaried exempt employees will increase substantially, from $455 per week to $913 per week. This change means that employers must decide whether to increase the salary being paid to current salaried exempt employees who make less than $913 per week in order to maintain those employees' exemptions from overtime pay requirements or to reclassify the employees as non-exempt. This increase in the salary threshold is just one of the changes that will take place under the new FLSA regulations, but it is the one that has most widely impacted businesses. In light of the recent Presidential election results, many employers are wondering whether the new administration will (or can) revoke the new regulations. First, the effective date occurs before the administration changes. Second, although there is chatter about what President-elect Trump will do, most observers do not think that this regulation will be his top priority during his first 100 days in office. Third, although there is a legal challenge to the regulations pending in Texas, the outcome of that case is still uncertain and may not be determined before December 1, although some are expecting a decision as early as later today. Lastly, these changes are DOL regulations and not an executive order; thus, the President-elect cannot simply void these regulations upon inauguration. (He could, however, order DOL to revisit the regulations and/ or to not strictly enforce them.) If a new DOL administration decided to reverse the regulations, it would take time to revoke them. Alternatively, a

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complicated law called the Congressional Review Act (CRA) allows Congress to introduce joint resolutions to disapprove of regulations. Because of the convoluted way the sixty-day time limit is calculated under the CRA, however, the period in which Congress can act extends far beyond sixty calendar days. If Congress were to disapprove of the regulations, it would need to adopt the joint resolution and submit it to the President for signature or veto. The bottom line is that, absent new developments, these regulations will be in effect as of December 1, 2016, and any employer who decides not to comply does so at their own peril. If you have questions about complying with the new regulations, please contact legal counsel.