# Client Alert: Overtime Makeover: Recent Developments in Both State and Federal Law Expand Worker Eligibility for Overtime Pay

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In Massachusetts, both state and federal laws require employers to pay workers overtime pay for all hours worked in excess of 40 in a workweek at a rate not less than time and one-half their regular rates of pay, unless exemptions apply. To determine whether or not a Massachusetts worker is eligible to receive overtime pay, an employer must consult the exemptions defined in the federal Fair Labor Standards Act of 1938 (29 U.S.C. § 201 *et seq.*, "FLSA") and the state law governing overtime pay (codified at M.G.L. c. 151 § 1A *et seq.*).

Within the past month, both state and federal authorities have announced important changes (or proposed changes) concerning the application of these exemptions:

- On March 15, 2019, the Massachusetts Supreme Judicial Court ("SJC") issued an opinion in the case of *Arias-Villano v. Chang & Sons Enterprises, Inc.*, interpreting the state law "agricultural" exemption more narrowly than the analogous exemption defined in the FLSA; and
- On March 22, 2019, the Wage and Hour Division of the United States Department of Labor ("DOL") proposed a new rule that, if adopted, will make more than a million more American workers eligible for overtime pay under the FLSA.

We discuss each of these legal developments below, along with their implications for Massachusetts employers.

***Arias-Villano* Reminds Employers that State and Federal Exemptions Are Not Identical**

In its recent decision in *Arias-Villano*, Massachusetts Supreme Judicial Court ("SJC") interpreted the exemption from the state overtime pay requirement applicable to workers "engaged in agriculture and farming on a farm." M. G. L. c. 151, § 1A (19). Based upon the plain language and legislative history of the Massachusetts overtime statute, the SJC determined that the "agricultural" exemption to the state law did not apply to the plaintiffs in the case, who were owed overtime pay.

The plaintiffs were employees at a facility where the defendant employers grow and harvest beansprouts year-round using an automated hydroponic process. Significantly, the plaintiff workers were not engaged in the growing or harvesting process; they "cleaned, inspected, sorted, weighed, and packaged the bean sprouts" and "cleaned the facility and discarded waste." They regularly performed these functions in excess of forty hours per week. Relying on the plain language definition of "agricultural and farm work" in M.G.L. c. 151, § 2 (i.e., "labor on a farm and the growing and harvesting of agricultural, floricultural and horticultural commodities"), the SJC decided that the overtime statute does not include the type of postharvesting activities in which plaintiffs engaged. This definition is markedly narrower

 

than the scope of the FLSA's agricultural exemption, which does encompass postharvesting activities.

The SJC also based its decision on the legislative history of the state overtime statute, which the legislature passed in 1960, in part, to protect employees from the burden of a long workweek without adequate compensation. In light of the legislature's intent to expand overtime protections for employees, the SJC held that exemptions to the overtime statute must be narrowly construed. As the SJC explained, the legislature intended the agricultural exemption to be narrow. The exemption was an attempt to balance the interests of employers and employees performing "labor on a farm." Namely, the legislature granted these laborers a guaranteed minimum wage (they were previously exempt), and in exchange employers no longer had to pay them overtime. When the agricultural exemption was first introduced to the legislature, it contained broad definitions of "agriculture" and "farming" that mirrored the FLSA. However, the legislature ultimately adopted more narrow definitions. In light of the legislature's clear intent to broaden overtime protections and minimize the scope of the agricultural exemption, the SJC held that it could not adopt the FLSA's broad definition of agricultural work, as urged by the defendants.

**DOL Proposes Rule to Narrow Application of "White Collar" Exemption to FLSA Overtime Requirement by Adjusting Earnings Thresholds**

On March 22, 2019, the DOL released a proposed rule that, if passed, would alter the scope of the FLSA's "white collar" exemption.

The "white collar" exemption (found at 29 CFR 541) exempts "bona fide" executive, administrative, professional, outside sales, and computer employees from the FLSA's overtime pay and minimum wage requirements. To be eligible for the white collar exemption, an employee must: (1) receive a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the ''salary basis test''); (2) receive a salary exceeding a standard salary level (the ''salary level test''); and (3) perform job duties primarily involving executive, administrative, or professional duties as defined by the regulations (the ''duties test'').

The current regulations also exempt "highly-compensated employees" ("HCEs") from the overtime pay and minimum wage requirements. HCEs must be paid more than the standard salary level, but are subject to a weakened duties test. An exempt HCE is simply one whose primary duty includes performing office or non-manual work and who customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative, or professional employee.

The DOL's proposed rule would make the following revisions to the current "white collar" exemption to the FLSA minimum wage and overtime pay requirements:

- raise the standard salary level to $679 per week (the equivalent of $35,308 annually for a full- year worker), up from the currently enforced level of $455 per week;
- permit employers to use nondiscretionary bonuses and incentive payments (made on an annual or more frequent basis) to satisfy up to 10 percent of that standard salary level;
- increase the total annual compensation requirement for HCEs from the currently-enforced level of $100,000 to $147,414 per year; and
- review and update the standard salary and HCE total compensation once every four years in order to ensure that they remain useful measures of employees' relative earnings and of identifying exempt employees.

Notably, unlike the case with the "agricultural" exemption at issue in *Aria-Villano*, Massachusetts' law does not provide

 

for a narrower "white collar" exemption than the FLSA: on its face, the Massachusetts exemption for executive, administrative, and professional employees extends to all of those earning more than $80 per week, and the implementing regulation (codified at 454 CMR 27.00) adopts the FLSA definitions of "bona fide executive, or administrative or professional person" in M.G.L. c. 151, § 1A(3), and "professional service" in M.G.L. c. 151, § 2.

Employers can submit their comments on the proposed rule, online or by mail, to the DOL on or before May 21, 2019. Employers should consider how the new rules will affect their payroll and how they may wish to alter their compensation structure as a result. Employers should work with employment counsel if they have questions about how to comply with their obligations under the FLSA and/or the Massachusetts Overtime Law, or if they are concerned about how the new DOL regulation may affect their business.

 