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**RE: Overtime Exemptions
Proposed Amendments to Regulations by United States Department of Labor**

DATE: July 9, 2015

FROM: Kane Kessler, P.C.
Labor and Employment Law Department

On June 30, 2015, the United States Department of Labor (“DOL”) issued proposed regulations regarding the three major exemptions to the overtime requirements of the Fair Labor Standards Act (“FLSA”), the executive, administrative, and professional exemptions. The proposed regulations seek to dramatically increase the salary threshold that employees must meet before his or her exempt status is considered under any of the applicable tests.

Under federal law, the current salary threshold is \$455 per week, or \$23,660 annually for full-time workers¹. Should the new federal regulations ultimately take hold, the exemptions will only apply to employees who earn a salary at the 40th percentile of weekly earnings for full-time salaried workers. In 2016, when the proposed regulations will likely take effect, DOL projects this to be \$970 per week, or \$50,440 for full-time workers. Under the proposed regulations, an employee who does not earn at least that amount will not be eligible for the executive, administrative, or professional exemptions, even if they otherwise meet the test for any of those exemptions.

The proposed regulations modify the exemption for highly compensated employees (“HCE”) as well. At present, federal law exempts employees who earn a salary in excess of \$100,000 from overtime provided that the employee performs primarily office or non-manual work and at least one of the exempt duties or responsibilities of an executive, administrative, or professional employee. To be exempt under this provision in the future, HCEs must earn a salary at the 90th percentile of weekly earnings for full-time salaried workers. In 2013, this was \$122,148 annually. The DOL did not project what this figure may be in 2016.

DOL estimates that in the first year after the proposed changes go into effect, 4.6 million currently exempt workers who earn at least the current weekly salary level of \$455 but less than the 40th earnings percentile would, without some intervening action by their employers, become entitled to minimum wage and overtime protection under the FLSA. Similarly, an estimated 36,000

¹ The threshold under the new federal regulations will supersede the lower threshold under state law.

currently exempt workers who earn at least \$100,000 but less than the 90th earnings percentile per year, and who meet the HCE duties test discussed above, may also become eligible for minimum wage and overtime protection.

These thresholds may be subject to change even after the regulations take effect, as the DOL seeks to establish a mechanism for automatically updating the salary levels going forward on an annual basis.

The comment period within which employers (and the public in general) can voice their opinions on these proposed changes begins July 6, 2015 and will end in sixty days on September 4, 2015. Though the proposed regulations do not contemplate changes to the well-established duties tests for each exemption, the DOL is considering whether revisions to the duties tests are necessary in order to ensure that these tests fully reflect the purpose of the exemption.

If you have any questions, please do not hesitate to contact David R. Rothfeld, Judith A. Stoll, Lois M. Traub, Alexander Soric, Robert L. Sacks, or Michael C. Lydakis.