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August 2016

New Overtime Rules

You may have heard a lot of buzz on new overtime rules. While changes have been made, many agricultural employers are still exempt from paying overtime. However, it is important to note what changed and who may or may not be affected.

First off, it has to be determined what defines an agricultural employer. An agricultural employer is one which employs persons performing services or operations in the production of food, fiber, or other agricultural products. Someone who plants, harvests, irrigates, feeds animals, etc. for the operation would be an example of an agricultural employee. Some examples of non-agricultural employers are a trucking company that hauls grain or an excavation company that does dirt work on the farm. Assuming the agricultural employer stays under the minimum "man days" rules per quarter as defined by the Department of Labor, the overtime rules have not changed and are still exempt. For more information on some of these rules go to: www.dol.gov/whd/regs/compliance/whdfs12.pdf

So what has changed? The changes are for non-agricultural employers who pay employees on a salary basis. Hourly rules have not changed. Any salaried employee that does not earn more than \$913/week or \$47,476/year (previously \$455 or \$23,660) starting December 1, 2016, that employee is eligible for overtime pay if they worked more than 40 hours per week. The overtime rate is time and half and the 40 hours is calculated on a weekly basis, not pay period. Likewise, any employee that is paid the minimum salary and does not meet a duties test, is also eligible for overtime. Examples of the duties test for exemption are Executive Exemption, Administrative Exemption, Professional Exemption, Outside Sales Exemption, and Highly Compensated Exemption. The duties test list for exemption is fairly extensive and somewhat cumbersome so communication with a tax professional or the Department of Labor is essential. These minimum pay amounts will be updated every three years so raises may need to be made accordingly to keep within the rules.

What options does this leave an employer?

- Some may choose hourly pay rather than salary if that is more cost beneficial than giving a raise.

- Pay the time and a half overtime as necessary if feasible.

- Raise any otherwise exempt employee's salary to the minimum rate.

- Limit hours to 40 hours per week if possible (may have to hire additional employees).

- Any combination of these options to comply with the rules.

Other things to keep in mind are the minimum wage, unemployment taxes, and worker's compensation insurance. The minimum wage in Nebraska as of 1/1/2016 is \$9 per hour. Non-agricultural employees are subject to federal and state unemployment taxes while agricultural employers **may** be exempt from unemployment taxes if they are under certain wage thresholds. Non-agricultural employers are also required to pay worker's compensation insurance. Agricultural employers **may** be exempt from this as well but may elect to provide the worker's

compensation insurance if so desired. If an employer is exempt and does **NOT** provide the coverage, employees are required to be notified in writing at the time of employment that coverage is not offered.

As you can see, having employees can cause some paperwork headaches. There are many rules to follow to keep in compliance. As always, keep in contact with our office with any questions or concerns.