Legal Matters®

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New federal overtime rules take effect

As an employer, you should know that the federal Fair Labor Standards Act (FLSA) requires workers to be paid a federal minimum wage and that wage workers and certain "non-exempt" salaried workers who work more than 40 hours in a week receive overtime pay at one and a half times their normal rate for each extra hour.

During the Obama administration, the U.S. Department of Labor proposed new regulations to double the minimum salary level under which salaried "white collar" workers (in other words, managers and professionals) would be entitled to overtime pay from $23,000 a year to $47,000. (The threshold hadn't been raised since 1975.) The proposed regulations also presented a new test designed to stop employers from misclassifying workers as "managers" exempt from overtime laws when they really weren't. The goal was to extend overtime protections to more than four million new workers. But the proposed regulations caused an uproar in the business community. Lawsuits suggested the Labor Department didn't have the authority to make the change, and the regulations were never implemented.

The Labor Department under President Trump worked on its own version of new overtime rules, which took effect Jan. 1. Because the changes could impact how your company assigns duties and approaches hiring and payroll management, it's important to be aware of what the new rules say.

Under the new rules, salaried executive, administrative and professional employees must be paid at least $684 a week, or $35,568 per year, to be exempt from overtime. That's significantly less than the Obama-era

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proposal, but still an increase. Up to 10 percent of that may come from nondiscretionary bonuses (bonuses based on a set of objective criteria), incentive payments and commissions, as long as those payments are received at least once a year.

The new rules define "executive," "administrative" and "professional" employees exempt from overtime:

• An "executive" employee is someone whose main responsibility is managing the company or one of its departments. He or she also must

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2019 a big year for refinancing, mortgage recovery

The year 2019 was the best year for mortgages since the crisis in 2006, the Wall Street Journal reported. The lending boom amounted to $2.4 trillion in home loans, an increase of 46 percent since 2018, according to industry research group Inside Mortgage Finance. The trend is expected to continue this year.

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According to the Mortgage Bankers Association, refinancings made up nearly 40 percent of mortgage originations in 2019.

Lending, fueled by cuts in interest rates, led to a boost in housing prices and home sales, all of which meant a boost for the economy overall. At the end of 2019, the average rate

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on a 30-year fixed-rate mortgage fell to 3.74 percent, compared to 4.55 percent at the same time last year.

Despite the overall improvement in the market, buyers face several barriers. A low supply of housing, and the fact that home prices are rising more quickly than incomes, continue to make it difficult for many Americans to buy. This is especially true for people seeking to buy their first homes, because lower rates can lead to higher prices, given that some buyers might be able to pay more in bidding wars.

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regularly direct the work of at least two full-time employees and have either authority over hiring, firing and promotions or significant input into such decisions.

• An "administrative" employee is someone who does office work related to general business operations and/or customers. To be exempt, an administrative employee's work must involve decision-making and independent judgment on significant matters.

• A "learned professional" is someone whose work requires advanced knowledge in a field of "science or learning" and involves the constant exercise of discretion and judgment.

You should contact an employment attorney versed in all the ins and outs of the new regulations to help you evaluate your workforce, including which workers you currently classify as "exempt" from overtime requirements, to make sure they still qualify. For workers who do not qualify, you need to decide whether to give them a raise so they qualify as exempt or to reclassify them as "non-exempt" and pay them overtime.

There are other issues to consider as well. If you reclassify workers as non-exempt, will they see it as a demotion, impacting morale in your workplace? Might you consider hiring more workers instead of paying overtime to existing workers who didn't previously qualify? And if you do this, do you run the risk of expanding your workforce to the point that you're subject to the Affordable Care Act and the Family and Medical Leave Act, when you previously were not?

Obviously there's no one-size-fits-all approach. That's why it's so important to talk to an employment lawyer where you live to discuss the decisions you will need to make regarding your organization.

Things to consider before renting a party bus

If you're considering chartering a party bus for a big night out, there's a lot to think about before providing your credit card number and signing the contract.

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While party buses generally provide a safe experience, things can and do go wrong, sometimes with tragic results. In some instances, you may be able to hold an operator legally accountable if you or a loved one is injured on a party bus.

Take the case of Jamie Frecks, a 26-year-old Kansas City woman who was celebrating a friend's bachelorette party when the party bus she was riding hit a bump rounding a curve on Interstate 35. As the bus lurched, Frecks, the mother of a six-week-old child, fell through a set of double side doors that opened unexpectedly. She landed on the highway and was fatally struck by three cars.

An investigation suggested that the driver had unlatched the doors, which had been installed by a previous operator to accommodate wheelchairs, to make way for a large cooler, and that the driver had failed to properly relatch them. Frecks' family sought to hold the bus company responsible in court and secured a significant settlement.

In most states, a party bus operator, as a "common carrier," would have a legal obligation to take the utmost steps to protect people from predictable harm, and in this instance, the victim's family was able to make enough of a showing that the operator had failed to take even reasonable steps to do so.

In most states, party bus operators also are expected to make sure minors do not drink. If an operator permits underage drinking and a young guest gets alcohol poisoning or is otherwise injured, the operator might be deemed at fault. Additionally, operators that serve or sell alcohol to adults are expected to follow the same rules as bars or restaurants. If the operator serves a visibly drunk passenger who then causes injury to someone else, the injured party may have a case against the operator.

Still, the ability to hold a party bus operator legally responsible for your injuries is far from certain. For example, an operator may require you to sign a waiver assuming all risks of injury. There are good arguments asserting that such waivers should not be enforced. But if a court does enforce one, you may have little recourse unless you can show the operator's conduct rose to the level of "gross negligence."

Another consideration is your own potential liability for harm that could occur.

Before chartering a party bus, consult with an attorney and your insurance agent to review the contract. And if you or someone close to you has been injured on a party bus, call an attorney to discuss your rights.

Relocating with kids after divorce

How hard would it be for you, as a divorced parent, to relocate with your children?

In some states, a parent with custody must give the other parent (whether that parent has shared custody or not) written notice of his or her plans. If the other parent objects, a family court will decide the issue. Elsewhere, the parent seeking to relocate has to petition the court directly for its blessing.

In most states, a court looks at the specific facts of each case and makes a decision based on what it views as being in the best interest of the child. In certain states, however, the court works under a presumption that a move is not in the child's best interest, in which case the parent seeking to relocate has to convince the court that the move will significantly improve the quality of life for the child. Some states use a two-step approach, in which the parent first has to show they are moving for good reason, then the other parent (assuming they object to the move) has to show that the move would cause the child harm.

In determining whether a move is the right thing for the child, a court can look at a variety of things, including the nature of the child's relationship with each parent, the location of other important people in the child's life, whether the move appears to be an attempt to alienate the child from the other parent, how old the child is and his/her individual needs, comparative resources and opportunities in each location, and the child's preference, depending on his or her age or maturity. You may even see a court appoint a "guardian ad litem," a psychologist, attorney or other professional specially equipped to investigate the situation and, acting on the child's behalf, make a recommendation the court.

These situations can be complicated, as a couple of recent cases show. For example, a divorced mother in Rhode Island recently sought to move with her children, who were five and seven at the time, to Ohio, where her own family lived. During the marriage, the father, a doctor, was the sole breadwinner while the mother was the primary caregiver. When they divorced, they were given joint legal custody, though the mother had primary physical custody. A family court judge denied the mother's request, focusing heavily on the kids' relationship with their father and his own parents, who lived nearby.

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On appeal, the mother argued that the family court wrongly disregarded the better housing and employment opportunities available for her in Ohio, the short time the children actually lived in Rhode Island before their parents divorced, how much more she had been involved in the children's upbringing than her ex-husband had and the support network she had available in Ohio.

But the Rhode Island Supreme Court disagreed, finding that the mother had not proven that her employment opportunities and the kids' emotional well-being would be significantly better in Ohio. The court also pointed out that the father's family provided the kids with a strong support network, too.

On the other hand, Massachusetts' highest court recently ruled that a divorcing mother could take her daughter to her native Germany. The couple had met and married overseas and the mother had only briefly lived in the U.S. at the time of the divorce. Meanwhile, the child had already spent significant time in Germany, while the father, who was American, wasn't making enough money from his job with a nonprofit to meet his child support obligations, and there was no extended support system for the child in Massachusetts. Additionally, though the child had a loving relationship with her father, he was frequently away for work and missed visitations that he did not attempt to make up. Accordingly, the court upheld a trial judge's ruling that it was in the child's best interest to relocate with her mother.

These cases can be very fact-dependent. If you are thinking of relocating (or your ex wants to move away with your child), talk to a family lawyer where you live.

We welcome your referrals.

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