

FAIR LABOR STANDARDS ACT

CRITICAL UPDATE

In the past SLRMA has provided its members timely self-audits to help schools stay aware with the changing regulatory landscape, especially with respect to schools' compliance with the Fair Labor Standards Act ("FLSA"). Within the next few months, the Department of Labor ("DOL") is planning to issue new rules that will significantly expand the number of employees who are eligible for overtime under the FLSA. Although the exemption for teachers is not expected to change, other currently exempt employees will lose their exempt status. In particular, professional, administrative, and executive employees and computer professionals who earn less than about \$50,440 a year will no longer be exempt. DOL may also change the lists of duties that qualify an employee for exemption under these categories. Additionally, the new rules are expected to raise the threshold for the "highly compensated" employee exemption, from \$100,000 to \$122,148. Moreover, the DOL has stepped up its enforcement interest regarding an employer's treatment of independent contractors and when an employee is shared between joint employers. In light of these proposed changes and increased enforcement, SLRMA will update its FLSA Self-Audit when the new rules are published.

Now is the time for school districts to consider taking the following steps to prepare for the rule changes:

- 1) Ensure that job descriptions for all personnel are current, so that any of DOL's "new duties" tests can be accurately applied;
- 2) Identify exempt employees who will need to be reclassified as non-exempt because they make less than \$50,440 a year;

- 3) To the extent possible, estimate how much overtime the school district will be required to pay employees based on the number of hours they actually work;
- 4) Consider implementing strategies to contain the expected additional overtime costs that may result from the changes in the rules. For example, school districts can consider restructuring jobs, hiring additional personnel, reducing employees' hourly rates so that their overall compensation remains unchanged or increasing some employees' salaries above \$50,440 so that the employees remain exempt;
- 5) Evaluate timekeeping and payroll systems to ensure that these systems can accommodate the reclassified employees; and
- 6) Plan to retrain employees who lose their exempt status on proper timekeeping practices.

It is unclear how much time DOL will give employers to comply with the new rules, but it could be only a few months. Schools should prepare themselves for any changes in anticipation of the 2016-2017 school year. When the final rules are released, SLRMA will provide your school with the tools necessary to help you ensure compliance with FLSA.