

New Jersey Conforms Its Overtime Regulations with the FLSA, But Forgets to Retain Its “Inside Sales” Exemption

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On September 6, the New Jersey Department of Labor and Workforce Development (NJDOL) enacted new regulations that conform the executive, administrative, professional, outside salesperson, and highly compensated exemptions under New Jersey’s Wage and Hour Law with the same exemptions under the federal Fair Labor Standards Act (FLSA). The NJDOL did so by repealing its old version of its “white collar” exemptions and adopting a new regulation that simply incorporates by reference into the New Jersey regulations the “white collar” exemptions found in the United States Department of Labor regulations at 29 C.F.R. Part 541. That change was generally considered good news for employers—with one exception.

Although well intended, the NJDOL’s repeal of the prior regulations has had what the NJDOL recently acknowledged was an “unintended consequence.” Specifically, the repealed New Jersey rules included a so-called “inside sales” exemption that exempted from overtime any employee whose primary duty consists of sales activity, and who receives a regular weekly rate of pay of at least \$400, and at least 50% of his or her compensation from commissions—an exemption missing from the federal regulations. The NJDOL has recognized this error and has announced its intention to engage in additional rulemaking to readopt the inside sales exemption under the applicable regulations; however, that could take several months.

Employers that rely on New Jersey’s “inside sales” exemption in their classification of employees as exempt from overtime should follow the NJDOL’s actions closely. Such employers should also consider possible risk-mitigation strategies, and should take into account arguments that there remains no entitlement to overtime for employees who fit within the inadvertently repealed inside sales exemption during the period prior to regulatory readoption.

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