Changes to the Fair Labor Standards Act Overtime Regulations and Narrowed Definition of Independent Contractor:

How will your workplace and employees be impacted?

September 15, 2015
Overview:

- DOL Proposed FLSA Rule
- Independent Contractor Guidance
- North Carolina Issues
- Social Media Update
- Affordable Care Act Update
- Questions
DOL's Proposed Rule: Background and Timeline

- March 13, 2014 – Presidential Memorandum
- July 6, 2015 – Proposed Rule Published
- September 4, 2015 – Comment Period Expires
- 2016/2017 – Publication of Final Rule/Implementation
The FLSA recognizes five major categories of exempt workers:

1) Executive employees
2) Administrative employees
3) Professional employees
4) Outside sales employees
5) Highly compensated employees
DOL’s Proposed Rule: Key Proposed Changes

- New minimum salary level to qualify for white collar exemptions
- New minimum total annual compensation requirement needed to qualify for the highly compensated exemption
- New mechanism for annually updating the minimum salary and compensation levels for exemptions
DOL’s Proposed Rule: What Employers Should Do

- Assess salary levels
- Assess time and record keeping procedures
- Assess job duties and descriptions
- Monitor updates
Independent Contractor Guidance:

DOL released an ‘administrative interpretation’ on July 15, 2015, that narrowed the classification for independent contractors.
Independent Contractor Guidance:

Employees vs. Independent Contractors

Employees:
- Protection under EEOC laws
- Wage and hour laws
- Employee benefits
- Subject to payroll deductions and withholdings
Independent Contractor
Guidance:

Employees vs. Independent Contractors

Independent Contractors:
• No protection under EEOC laws
• Wage and hour laws don’t apply
• No employee benefits
• Not subject to payroll deductions and withholdings
Independent Contractor Guidance:

DOL’s Recommended Test

1) Is the work an integral part of the employers business?
2) Does the worker’s managerial skill affect the worker’s opportunity for profit or loss?
3) How does the worker’s relative investment compare to the employer’s investment?
4) Does the work performed require special skills and initiative?
5) Is the relationship permanent or indefinite?
6) What is the nature and degree of control exercised or retained by the employer?
Independent Contractor Guidance:

Key Takeaways

- Independent contractors should be used sparingly
- The type and scope of work the independent contractor will be performing is important
- Independent contractor agreements with business entities does not always provide protection
- Some industries are more vulnerable
Independent Contractor Guidance: Best Practices

- Identify someone to monitor independent contractors
- Maintain basic records on independent contractors
- Don’t give contractors access they do not need
- Implement internal audits of independent contractors
Independent Contractor Guidance: Recent Cases
North Carolina: Recent Developments

- “Contract to Cheat”
- Employee Fair Classification Act (H.B. 482)
Social Media Update

- Social media policies
- Social media in hiring
- Online surveillance
- Discipline over online behavior
- BYOD policies
ACA Update Highlights

- Reporting Deadlines
- ALE - reminders
- Questions
ACA Update: Reporting Deadlines

- Form 1094 - C – Transmittal Form
- Form 1095 - C – Employee Statement
- Form 1094 - B – Transmittal Form
- Form 1095 - B – Health Coverage

Due Dates:
- To Employees by January 31
- Filed with the IRS by February 28 (March 31 if electronically filed)

Must be timely filed to qualify for reporting penalty relief.
ACA Update: ALE - Reminders

- ALE = 50 or more full-time employees - for the preceding year
- Includes Full Time Equivalents
- Includes Controlled Group members
- May include Seasonal Workers
- Employee classification is important
- All ALE’s must report – even if you have transitional relief for 2015
ALE on the bubble …

- You may exclude certain Veterans
- 1st Year as ALE – transition relief

- Fully insured plan with self insured HRA – recommended that you report the HRA in Section III of Form 1095-C or on 1095 – B.

- Prepare Now
Questions?