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Labor and Employment Alert: Beware Potential Benefit Plan Impacts of the Final Overtime Regulations

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In our [labor and employment alert](#) on September 25, 2019, we outlined the final regulations narrowing the FLSA exemption and expanding the number of workers eligible for overtime.

In evaluating the impact of these final regulations, employers will obviously consider the financial impact of overtime and whether changes are needed to newly non-exempt employee's hourly rate of pay. Any changes to an employee's stated rate of pay has employee relations implications that need to be considered.

Much less intuitive is the potential unexpected impact of this new rule on employee benefit plans. Employers should review the eligibility and compensation definitions in their benefit plans so that they can determine whether changes to an employee's exempt status and overtime eligibility triggered by these final regulations impact the benefit plans.

For example, many plans base eligibility on an employee's classification as hourly/salaried or exempt/non-exempt. Any plan that excludes non-exempt employees would have several currently eligible individuals become ineligible because of the application of the new regulations standards. To protect reclassified employees from this change in plan eligibility, a plan amendment would be needed.

In addition, employers should consider the impact of the changed classification on discrimination testing. Without such an amendment, a plan for exempt employees could become discriminatory in favor of highly compensated employees as more of these lower-paid, newly non-exempt employees cease to be eligible for the exempt employee plan.

Similarly, employers should consider the impact of the change on all benefit plan compensation definitions. For example, if a retirement, life insurance or disability benefit is calculated using base pay, then any adjustment to base pay for formerly exempt employees who are normally expected to work overtime has the effect of reducing these

benefits. In addition, an exclusion of overtime that was historically non-discriminatory could become discriminatory as more non-highly compensated employees receive excluded overtime.

As employers adjust their payroll systems to reclassify newly non-exempt employees and adjust pay rates to give effect to these new rules, they should also evaluate the impact on their benefit plans and consider whether amendments are necessary or appropriate.

Contact your Vorys lawyer if you have questions about the effect the new rule will have on your business and its benefit plans.