

# The INSIDE STORY

June 2016

## U.S. Department of Labor Increases Minimum Salary For Employees Exempt From Overtime Pay

by Jennifer Turco Meyer

On May 18, 2016, President Obama and Department of Labor Secretary Perez announced the publication of the DOL's final rule updating the salary threshold for overtime regulations, which will extend overtime pay protections to over 4.2 million workers who are not currently receiving overtime pay. Effective December 1, 2016, the regulations will double the current standard salary level for employees who are exempt from overtime pay from \$455 per week to \$913 per week. This means that for employees whose salary does not meet \$47,476 per year, the employee must be paid overtime



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## Here's One to Watch

by David Handley

On March 8, 2016, the Nebraska Court of Appeals decided the case of *In Re Estate Evertson v. Wamsley*, 23 Neb App. 734. On first blush, the case looks like a great win for injured workers who recover money against an at-fault third party and are then required to share that money with their employer. However, the case is headed to the Nebraska Supreme Court and may be overturned. Some legal background is necessary to try to understand this thorny case. If an injured worker is injured by the negligence of a third party, the injured worker may also be entitled to compensation from the third party. When the injured worker is successful against the third party, the law requires that the employer be paid back a portion of the money that the injured worker recovers from the third party for benefits the employer paid under workers' compensation law. If the employer and injured worker cannot agree on what amount is to be paid back, then the law allows the parties to ask the court before whom the action is pending to divide the money between the parties and to determine if the employer gets a future credit against payments otherwise owed to the injured worker by the employer for workers' compensation benefits.

In the *Evertson* case, Bruce Evertson was killed on the job when the car he was traveling in was struck by a tractor trailer. The at-fault party offered their policy limits of \$500,000.00 for settlement of the case. Mr. Evertson left behind a widow and two children. Of the \$500,000, his two children each received \$125,000 and his widow received the remaining \$250,000. Additionally, \$500,000 was paid out from an underinsured motorist policy in connection with the car crash. Under Nebraska workers' compensation law, Mr. Evertson's widow was entitled to burial benefits and future weekly indemnity benefits of \$728 per week until she dies or remarries. The widow and the workers' compensation carrier could not agree how to split the \$250,000 or how much of a future credit the carrier would have for payments of workers' compensation benefits. The parties asked the probate court

to determine those issues. At the time of the hearing to determine how the money was to be divided the workers' compensation insurance carrier had already paid over \$36,000 in benefits. The probate court determined that the workers' compensation carrier should receive nothing - nothing for the payments that the carrier made already to the widow and nothing to offset the payments that will be made to her in the future.

Interestingly, the Nebraska Court of Appeals agreed! The case has been appealed to the Nebraska Supreme Court and is a hotly contested matter. The Supreme Court may or may not take this case on appeal though I think it likely will. While I am excited for the injured worker's family for the outcome they have received so far, I am not optimistic that this case will stand as currently decided by the Nebraska Court of Appeals. The main reason is because there are several Nebraska Supreme Court cases that seem to conflict with this one and although some of those cases were discussed in the present case, I do not believe the appellate court used them in the same way the Supreme Court intended. I hope I am wrong because I always root for the injured worker. I will certainly write more once we find out what the Nebraska Supreme Court is going to do with this case.



### **(continued from front cover)**

for any hours worked over 40 hours per week. In addition to meeting the increased salary threshold, employers must continue to ensure all employees have been properly classified according to the actual duties the employees perform. The new regulations also require the salary threshold to be automatically increased every three (3) years beginning January 1, 2020, to prevent the requirements from becoming outdated like they have in recent history.

This will be a significant change for many of our clients who are currently not receiving overtime pay but will be entitled to receive it when the regulation takes effect this December. Some employers will implement raises to keep their workers exempt from overtime, some employers will begin cracking down on unauthorized overtime hours, and some employers will fail to do anything different in the way they pay their exempt employees. If you find yourself in one of these situations, or you have questions about how the new regulation affects you, please don't hesitate to give us a call. We can answer your questions and help you ensure that the compensation you are receiving is fair under Federal and state laws.



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## Quick Tip

Sometimes an injury forces us to make some tough choices when it comes to our budget. Financial advisors offer tips for handling those budget woes until you are able to get back to work. Here are a few:

1. Cancel your cable television.
2. Get rid of your smart phone and opt for a less expensive prepaid phone, or call your cell phone provider and negotiate a less expensive plan.
3. Cancel all subscriptions to newspapers, magazines and mail-order services.
4. Purchase groceries at discount stores and use coupons for those things you already plan on buying.
5. Postpone large purchases.
6. Eliminate eating out as much as possible.
7. Call your insurance agent and ask about good driver discounts or how a higher deductible will change your premiums.
8. Skip the movie theater and the expensive snacks that go along with it. The \$1.00 movie vending machines are a great alternative.
9. Opt for a home-brewed cup of coffee instead of the \$5.00 drive-thru coffee.



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