

# Long Island Business News

July 29-Aug. 4, 2005

THE PULSE OF LONG ISLAND BUSINESS

LAMB & BARNOSKY, LLP

## Overtime regs kick in, but implementation lags

**By** The experts are working overtime trying to solve this puzzle: Four white-collar workers sit side by side in a typical office — an accountant, a programmer, a sales rep and a bookkeeper. They all work 45 hours one week. Who is entitled to overtime?

The answer at many companies: Who knows?

“Do they or don’t they?” today is the biggest question on the minds of many human resources professionals. Even with new government regulations that were supposed to clear up the whole mess. Especially with the new regulations.

Today, one year after the federal government pushed through the biggest change in 50 years, the experts can agree on just one thing: Many firms have yet to comply.

Often they haven’t even addressed the thorny issue of who’s now entitled to the basic overtime rate

of one or one-and-a-half times their regular pay after working 40 hours a week.

“I think larger companies, with significant human resources departments, have been more likely to comply,” says John Bauer, a partner at Grotta, Glassman & Hoffman in Melville. “They have the resources. They were ahead of the curve.”

One reason firms may have been slow to move is that they didn’t comply with the old regulations to begin with.

And complying entails a full review of a company’s entire workforce and figuring out how everyone fits into the new system — which itself may not always be clear.

**DO THEY OR DON’T THEY? Rich Zuckerman of Lamb & Barnosky said deciding which employees have the right to overtime based on new government regulations is complicated**



“Implementation means sitting down with the HR person or people and reviewing job classifications and duties,” explains Rich Zuckerman, a partner at Lamb & Barnosky in Melville. “You want to ascertain whether previously excluded employees are now included or whether people presently receiving benefits are no longer entitled to them.”

The revamp essentially was meant to update the Fair Labor Standards Act, a laudable goal, adapting it to

## Overtime compliance slow going, continued

a new era rather than keeping it intact from the days of early rock 'n' roll and poodle skirts before computers existed.

"The government decided that the economy had changed so much over the last half century that the overtime rules no longer bore any resemblance to the marketplace reality," in Zuckerman's view. But the devil was in the details and the new regulations prompted an outcry from labor representatives that it would rob workers of overtime, while the government said it might even increase the overtime rolls.

What we do know is that the regulations nearly doubled the level of weekly pay to \$445 a week at which workers are exempt, increasing those eligible. But they also exempted people with \$100,000 salary, who meet other criteria, from overtime. A year after the debate raged over whether the new system would make more, or fewer, people eligible for overtime, experts said they still can't yet know for sure what the result will be.

As Zuckerman sees it, "Ultimately, I think that the net result will be that fewer people will be entitled

to overtime as a result of these changes."

As for Bauer, "It's hard to say whether more or less are covered" because of the numerous changes.

Another key change is that today more people are conscious of the existence of regulations regarding whether they qualify for overtime, even though they may have assumed they do not.

"People are more aware of it, because of the attention paid to it," said Bauer. "I think employees started asking questions. Am I being paid properly? It's led to greater awareness and more activity."

These days, attention to overtime is leading to more inquiries from employers as well as more actions from lawyers charging that their clients are entitled to overtime.

Or as Bauer puts it, "We're seeing more of that too, where an individual might get fired, having nothing to do with the way they're paid...The person goes to a lawyer, thinking it's about being wrongfully terminated. But the lawyer says, 'How did they classify you?' And the lawyer

concludes they were improperly classified, and should have been getting overtime."

Firms often agree to pay back overtime, faced with a threat by an attorney to bring on board all employees in a similar situation.

"A lot of them get settled, because the law is on the side of the employees. Employers are mistakenly, not intentionally, paying people on a salary, thinking they did not have to pay them overtime," says Bauer. "They were improperly classifying them as salary-exempt."



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