

UPDATE: New Jersey DOL Proposes to Restore the Accidentally Omitted “Inside Sales” Exemption to State’s Overtime Regulations

November 22, 2011

On October 24, we published a LawFlash¹ discussing regulations enacted by the New Jersey Department of Labor and Workforce Development (NJDOL) conforming 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). As noted in the LawFlash, the NJDOL in its new regulations inadvertently eliminated the “inside sales” exemption that exempted from overtime any employee whose primary duty consists of sales activity, who is paid at least \$400 per week, and who receives at least 50% of his or her compensation from commissions. However, the NJDOL also announced its intention to rectify this oversight by rulemaking.

The NJDOL now has taken the first step toward restoring the “inside sales” exemption under New Jersey’s overtime regulations. In the November 21 issue of the *New Jersey Register*, the NJDOL proposed to amend N.J.A.C. 12:56-7.2(c) and restore the accidentally omitted “inside sales” exemption.

The NJDOL will hold a public hearing on the proposed amendment on Tuesday, December 13, 2011 from 10:00 a.m. to 12:00 p.m. at the New Jersey Department of Labor and Workforce Development, John Fitch Plaza, 2nd Floor Large Conference Room, Trenton, New Jersey. Those who wish to be included on the list of speakers should call the Office of Legal and Regulatory Services at 609.292.2789.

Alternatively, written comments may be submitted until January 20, 2012 to the attention of David Fish, Regulatory Officer at the Office of Legal and Regulatory Services, New Jersey Department of Labor and Workforce Development, P.O. Box 110 - 13th Floor, Trenton, New Jersey 08625-0110.

Employers that rely on New Jersey’s “inside sales” exemption in their classification of employees as exempt from overtime should continue to follow the NJDOL’s actions closely. It appears likely that this correcting regulation will be adopted in early 2012. While there are arguments that there remains no entitlement to overtime for employees who fit within the inadvertently repealed inside sales exemption during the period prior to regulatory readoption, employers still should consider possible risk-mitigation strategies.

1. View our October 24, 2011 LawFlash, “New Jersey Conforms Its Overtime Regulations with the FLSA, But Forgets to Retain Its “Inside Sales” Exemption,” at http://www.morganlewis.com/pubs/LEPG_LF_NJAmendsOvertimeRegulations_24oct11.pdf.

If you have any questions concerning the information discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

Princeton

Rene M. Johnson	609.919.6607	rjohnson@morganlewis.com
Thomas A. Linthorst	609.919.6642	tlinthorst@morganlewis.com
Richard G. Rosenblatt	609.919.6609	rosenblatt@morganlewis.com
James P. Walsh, Jr.	609.919.6647	jwalsh@morganlewis.com

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