

# Big Changes Coming to Federal Overtime Regulations

By Melissa Hazell Davis

THE FAIR LABOR STANDARDS ACT (FLSA) REQUIRES employers to pay all employees overtime at the rate of time-and-a-half, unless the employees are considered “exempt” under U.S. Department of Labor (DOL) regulations. The DOL’s newly released final regulations will change the rule as to who is “exempt.” Ivo Becica, associate at Obermayer Rebmann Maxwell & Hippel LLP, recently presented at the Aug. 25 Labor and Employment Law Committee Meeting on the upcoming changes to the overtime regulations under the FLSA that take effect on Dec. 1, 2016.

Becica pointed out that the new regulations nearly double the minimum salary for “white collar” exempt workers. Currently, employers are exempt from paying overtime to executive, administrative and professional workers who are paid a fixed salary, paid at least \$455 per week (or \$23,660 per year) and primarily perform certain executive, administrative or professional duties. With the recent change, the salary threshold to qualify for overtime exemption will be raised from \$455 per week to \$913 per week (or \$47,476 annually), effective Dec. 1. It is estimated that this change will extend overtime protections to nearly 5 million workers in 2016 and is meant to target employees such as restaurant assistant managers, some office workers and convenience store managers who are currently expected to work 50 to 60 hours a week or more, but receive no overtime pay and earn less than the poverty level for a family of four.

Becica noted two additional changes to the overtime

regulations. First, as of Dec. 1, there will be automatic updates to the minimum exemption threshold every three years. It is estimated that the threshold will be raised to \$51,000 per year for the “white collar” exemption in 2020. Second, the highly compensated employee threshold was raised from \$100,000 to \$134,000.

In addition, Becica advised the attendees on the best ways to prepare for the upcoming changes. According to Becica, employers should self-audit the exemption statuses of their employees between now and Dec. 1. Employers will need to determine whether to reclassify as non-exempt employees who formerly were exempt from overtime or raise salaries to \$913 or more per week (or \$47,476 per year) for the “white collar” exempt employees or to over \$134,000 per year for those employees currently qualifying for the highly compensated employee exemption.

Employers also should consider what preserving the status quo is worth to their organization. For example, an employer might consider reclassifying an employee as non-exempt if it would require an unacceptable salary increase to keep the employee in exempt status and if that employee does not often work more than 40 hours per week. However, if the formerly exempt employee’s salary is near the threshold and overtime payments would be significant, an employer should consider raising that employee’s salary to preserve his/her exempt status.

Becica also said that this is a good time for an



Photo by Thomas E. Rogers

Sarah R. Lavelle, co-chair, Labor and Employment Law Committee, and Ivo Becica, associate, Obermayer Rebmann Maxwell & Hippel LLP, at the Committee’s meeting on Aug. 25.

employer to conduct an overall review of its employee classifications. If some employees are misclassified under existing FLSA regulations, the new regulations provide a good opportunity to correct those problems too. Also, of course, labor and employment lawyers can be retained to assist with these review and audit procedures.

*Melissa Hazell Davis (melissa.hazell@flastergreenberg.com) is an attorney at Flaster/Greenberg.*

## PHILADELPHIA BAR ASSOCIATION CLE - CRIMINAL JUSTICE SECTION

# Treatment Court Aims to Keep Clients Free, Clean

By Matt Cockayne

THE GOAL OF TREATMENT COURTS IS TO COMBINE substance abuse programs with the criminal justice system. The success of these courts is based on three truths: the fact that clients who are court ordered to drug addiction treatment do much better than those who do it voluntarily; the longer you keep a drug addicted client in treatment, the more likely that client will be successful with drug addiction recovery over their lifetime; and, relapse is a part of recovery.

Lance M. Lindeen, assistant district attorney, Philadelphia District Attorney’s Office; Matthew J. Schmonsees, coordinator, First Judicial District of Pennsylvania, Philadelphia Treatment Court; and Erica Bartlett, assistant defender, Defender Association of Philadelphia; presented a Philadelphia Bar Association CLE titled “Everything You Wanted to Know About Treatment Court” on Sept. 8. They covered the history and philosophy of treatment courts and how they provide a great benefit for many clients.

They began by explaining the history behind treatment courts, also known as drug courts. The first drug court was founded in 1989 in Miami with the intent to better help criminals with drug addictions. The Philadelphia Treatment Court was created in 1997 as the first of its kind in Pennsylvania, and now there are 30 across the state.

According to Schmonsees, the Philadelphia Treatment Court assists clients through a system of sanctions and rewards. Sanctions depend on the person, varying from case to case. However, jail is a last resort. The court actually uses jail as a threat that often keeps clients motivated to stay in the program. On the other hand, if client is doing well, rewards are given, such as small tokens or certificates with the view that positive reinforcement will keep a client motivated in the treatment program.

To graduate from the year-long treatment program, defendants must pass through four phases that include monthly court visits, attending treatment and submitting urine for drug tests. The first phase is 30 days, the second is 90, and third and fourth are four months each.

Finally, the client must pay a \$65 fee to graduate from the program. According to the three presenters, success of the program is determined by the client going to treatment. “The heavy lifting is done by the defendant and that’s what we tell them up front. They don’t come into the program expecting it to be a check-the-box sort of situation,” Lindeen said.

The goal of the program is to keep the clients out of jail and substance-abuse free for the rest of their life.

*Matt Cockayne (mcockayne@philabar.org), junior at Temple University, is a communications intern at the Philadelphia Bar Association.*

### CLE Topic Idea?

To submit a topic idea for a CLE course or volunteer to be a course planner or presenter, contact Director of Continuing Legal Education, Tara D. Phoenix, at 215-238-6349 or tphoenix@philabar.org.