**Fair Labor Standards Act (FLSA) New Salary Threshold Postponed**

As of November 22, 2016 a preliminary injunction was issued postponing the US Department of Labor’s (DOL) overtime rule requiring those employees who are exempt from the overtime rules to make at least $47,476/yr. The injunction applies nationwide. As a result of the injunction employers do not need to implement changes by the December 1, 2016 deadline.  The ruling may be appealed by the DOL, so the injunction could be overturned.

The Office of General Counsel at the TBR System Office hosted a conference call on November 28, 2016 to answer questions and issues from representatives at TBR institutions. Below are the questions and corresponding answers that were discussed on the call.

1. Will the TBR System Office mandate the institutions take the same course of action?

No, each institution is in a different place within the implementation. Therefore, each institution needs to proceed in the manner that makes the most sense for them under the circumstances. With each institution having their own classification structure, compensation plan, and budget, flexibility was afforded the institutions in the implementation of the new rule. Therefore, that same flexibility will be afforded when deciding whether to proceed with the changes or put them on hold until more information is available. Specific questions should be directed to the institution’s legal counsel.

1. If you have already told individuals they will receive a raise on December 1, can you still postpone the implementation?

It depends on the wording in the communication. Please work with your legal counsel to review if a commitment was made and discuss potential morale issues of reversing that decision.

1. If employees were notified their status was changing to non-exempt, can you still continue with that transition?

Yes, you may continue with the transition of changing job descriptions from exempt to non-exempt and having employees track their hours worked.

1. If an institution wants to postpone changing employees to non-exempt until the final ruling is known, may they require the potentially affected employees to keep timesheets until the outcome of the injunction is known?

Yes, you may require employees to keep timesheets tracking their hours worked until the outcome of the injunction is known. The benefit of requiring this tracking is the ability to more easily calculate any potential overtime, should the injunction be reversed and it made retro-active to December 1, 2016.

Summary: Each institution must consider which approach causes the least disruption and is best choice for their workforce. If you have not already reclassified employees, you may want to postpone your decision and monitor the policy developments closely. Work with your legal counsel to review the best course of action for your institution given the current circumstances.

Updates will be provided as more information is available.