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New Overtime Payment Regulations Effective on August 23, 2004

On April 23, 2004, the U.S. Department of Labor (DOL) released the final regulations governing overtime eligibility for “white-collar” workers under the Fair Labor Standards Act (FLSA). The regulations have not been substantially updated for over 50 years, creating confusion for workers and employers, generating class action litigation and failing to effectively protect workers' pay rights.

“When workers know their rights and employers know how to pay workers, everybody wins,” said U.S. Secretary of Labor Elaine L. Chao. “With the 'FairPay' rule, we are restoring overtime to what it was intended to be: fair pay for workers, instead of a lawsuit lottery. And we will use these new clear standards to vigorously enforce the overtime laws on behalf of workers—building on this administration's strong record of pro-worker wage and hour enforcement.”

The new FLSA regulations will become effective on Aug. 23, 2004, and do not require congressional approval. The new rules expand the number of workers eligible for overtime by nearly tripling the salary threshold. Under the half-century old regulations, only workers earning less than $8,060 annually were guaranteed overtime. Under the new rules, workers earning $23,660 or less are guaranteed overtime. This strengthens overtime protection for 6.7 million low-wage salaried workers, including 1.3 million salaried white collar workers who were not entitled to overtime pay under the existing regulations. These workers will gain up to $375 million in additional earnings every year.

The business community, led by the U.S. Chamber of Commerce, lobbied effectively for the regulation overhaul. U.S. Chamber President and CEO Tom Donohue said, “We need reform because overtime regulations are out-of-date and don't reflect today's workplace. Our Depression-era job categories (which determine overtime eligibility) were created when the economy looked completely different from today's. The workplace has evolved.”

Despite the release of the department's final rules, the FLSA overtime changes continue to be a contentious issue on Capitol Hill. On May 5, 2004, the Senate adopted an amendment to a corporate tax bill that would block the DOL's new rules denying overtime pay to certain white-collar workers. Five Republicans joined with Senate Democrats to vote in favor of the amendment.

The fate of the amendment is uncertain in the House. CQ.com is reporting that House Republican leaders are expected to pressure members of their caucus to vote against any similar measure. On Oct. 2, 2003, the House voted 221-203 in favor of a non-binding motion to strip funding for the DOL's initiative to overhaul the system of overtime payment. If the measure is passed by Congress, it will “likely face a Bush veto,” according to CQ.com.

To help smooth the implementation process, Labor Secretary Chao named a new enforcement task force within the Wage and Hour Division of the Department of Labor to maximize protection of workers' pay rights under the new rules. The department has also developed a number of resources to assist employers to comply with the new regulations. Please visit the DOL's Web site to access the materials or call (866) 4US-WAGE. For additional information on FLSA compliance, please consult with your own attorney.

Ten Billion ACH Payments Occurred in 2003

More than 10 billion automated clearing house (ACH) payments were made in 2003, according to statistics released by NACHA–The Electronic Payments Association–at its Payments 2004 conference.

“The results that NACHA announced are proof of consumers' increasing use of electronic payments,” said Leonard J. Heckwolf, chairman of NACHA and senior vice president of Bank One's Consumer Payments Solutions. “The greater reliance on electronic payments benefits financial institutions of all types and s, as well as their customers.”

NACHA reported a grand total of 10.017 billion ACH payments in 2003 valued at $27.4 trillion, representing increases of 12.0 percent and 12.3 percent, respectively, over 2002. The number of ACH payments originated by commercial financial institutions increased to 9.09 billion in 2003, up 12.9 percent from 2002. These payments were valued at $24.6 trillion. The federal government originated a total of 924 million ACH payments in 2003, up 3.5 percent, and valued at $2.8 trillion.

ACH payments include direct deposit of payroll, Social Security benefits and tax refunds, direct payment of consumer bills, e-checks, business-to-business payments and federal tax payments. ***continued on Page 2...***

Most Americans Think Identity Theft Could Happen to Them

Americans are more aware of identity theft and are taking preventative measures to protect themselves against this growing financial threat. According to a survey of 500 Americans, conducted online by professional research firm InsightExpress, 15 percent of Americans have been victims of identity theft, with one-third having had friends or family members victimized.

Consumers are more attune to the risks of identity theft as 42 percent of Americans have a higher level of concern over the possibility of identity theft this year than last, while almost three out of five (59 percent) are actively taking measures to protect themselves.

An overwhelming majority of Americans (85 percent) are concerned that identity theft could happen to them. Americans say the online purchasing environment carries the greatest risk of identity theft (37 percent) followed by telephone purchases (34 percent) and in-person purchases (10 percent). Americans' anxiety over identity theft doesn't stop with credit card purchases, as they cite ways they feel they could be victimized:

- Stolen wallet: 86 percent
- Accessing a credit card number on the Internet: 65 percent
- Identifying information on Internet sources: 64 percent
- Stolen mail from an unlocked mailbox: 64 percent
- "Dumpster diving" in trash bins for un-shredded documents: 58 percent
- Fraudulently accessing credit reports: 56 percent
- Obtaining your name and Social Security number from personnel or customer files in the workplace: 54 percent
- "Shoulder surfing" at ATM to capture PIN numbers: 46 percent

While online shopping has always posed concerns about identity theft, consumers are taking widespread measures both online and off to protect themselves. Citing both financial implications and the general nuisance factor as the key pain points, Americans actively trying to prevent identity theft are taking the following steps:

- Avoid giving my Social Security number out: 87 percent
- Shred or destroy bank and/or credit card information: 83 percent
- Shred or destroy any credit card or other direct mail offers: 81 percent
- Create passwords containing numbers and letters: 61 percent
- Avoid buying or making donations via the phone: 58 percent
- Only purchase goods online from a reputable Web site: 56 percent
- Install a computer firewall at home: 52 percent
- Read the privacy statements and/or bank liability clauses: 50 percent
- Check my credit report more frequently: 38 percent
- Only use one credit card for purchases: 31 percent
- Avoid shopping online: 31 percent
- Avoid using my debit/check-cashing card for purchases: 20 percent
- Subscribe to an identity theft protection program: 11 percent

In terms of liability, almost half of consumers (48 percent) expect that they would be at least partly responsible for charges made on their credit cards should they become victims. Almost three out of five (58 percent) say the person who stole the card is responsible, followed by the institution who issues the card (33 percent), the institution that approves the credit card charge (29 percent) and the merchants (26 percent).

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For the first time, the number of debits originated by commercial financial institutions exceeded the number of credits, largely due to the rapid growth of the five consumer ACH debit applications (e-checks) implemented since 1998. Collectively, more than 1.3 billion e-check payments were made, a 154 percent increase over 2002. The five applications are:

- **Internet-initiated ACH debit (WEB):** American consumers initiated 689 million ACH debits on the Internet, tripling in volume for the second consecutive year. NACHA estimates that 80 percent of these payments were to pay bills, 18 percent were to transfer funds, and 1 percent were to make purchases. The average amount of a Web e-check was $291.
- **Accounts receivable (ARC) check conversion:** More than 220 million consumer check remittances were converted into ACH debits, an 825 percent increase over 2002. The average amount of an ARC payment was $296.
- **Point-of-purchase (POP) check conversion:** Approximately 204 million consumer checks were converted into ACH debits at retail locations, up 22 percent. The average amount was $70.
- **Telephone-initiated ACH debits (TEL):** Americans made 170 million e-check payments over the telephone in 2003, up 151 percent. The average amount was $374.
- **Re-presented check (RCK):** Retailers made 31.3 million RCK transactions in 2003, up 20.1 percent. The average dollar amount was $155. A re-presented check entry is a consumer NSF check that is re-presented for payment electronically rather than through the paper check collection system.

Combined, these five ACH e-check applications accounted for 13.1 percent of all ACH payments in 2003. The WEB, ARC and TEL e-check applications are primarily used in consumer bill payment. Credit card issuers, mortgage lenders and telecommunications companies have been among the leading adopters of these payments.