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- **Business Law and Transactions**
- **Commercial Litigation**
- **Environmental and Water Law**

While focusing in our primary practice areas, our attorneys maintain expertise in a broad range of specialized practice areas and subspecialties. We pride ourselves on being able to offer clients the sophistication of a big firm based on the depth of our attorney experience, and yet provide the personal service, cost effectiveness, and innovation only possible by a firm of our size.

At Burns, Figa & Will, P.C. we view our unique mix of size and expertise as the key to providing exceptional legal services with integrity, professionalism and expertise.

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Briefly

. . . from Burns, Figa & Will, P.C.

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contents

New “White Collar” Overtime Rules 2
Department of Labor releases its new overtime rule – employers should familiarize themselves with the new regulations and their impact on executive, administrative, and professional employees

BFW Company Culture: Giving Back to our Communities 3
Burns, Figa & Will, P.C. is actively involved in the ongoing process of aiding, improving and sustaining communities
Firm News 5
The latest on the movers and shakers of Burns, Figa & Will, P.C.

Briefly. . . from Burns, Figa & Will, P.C. is published periodically to provide general information to our clients and friends about legal issues and new developments in the law. Additional articles prepared by our attorneys can be found on our website at www.bfw-law.com.

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New “White Collar” Overtime Rules

By F. J. “Rick” Didinger II

The Department of Labor (DOL) recently released its new rule regarding overtime for “white collar” employees. Absent congressional action, the new rule goes into effect on August 23, 2004. See 29 C.F.R. Part 541. The DOL estimates that the new rule will strengthen overtime protections for more than 6.7 million salaried workers and will extend overtime rights to approximately 1.3 million white collar workers. See 69 FR 22122. Therefore, employers should familiarize themselves with the new rule and its impact on executive, administrative, and professional employees.



Background

The Fair Labor Standards Act (FLSA) generally requires covered employers to pay employees at least the minimum wage for all hours worked, and overtime pay of time-and-one-half the regular rate of pay for all hours worked over forty (40) in a single work week. The FLSA, however, provides an exemption from the minimum wage and overtime pay requirements for “any employee employed in a bona fide executive, administrative, or professional capacity.” 29 U.S.C. 213(a)(1). The new rule defines and delimits the exemptions for executive, administrative and professional employees.

Major Changes

The final rule revises the existing regulations in several important respects: First, the final rule nearly triples the minimum salary level required to qualify for exemption from \$155/week to \$455/week. Thus, employees will now need to make at least \$23,660/year to potentially be classified as an executive or administrative employee.

Second, employers paid a salary at or above the minimum level (\$23,660/year), but less than \$100,000/year are only exempt if they also meet the job duties test. These “duties” tests are as follows:

Executive Duties Test

- “Primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof.”
- Customarily and regularly directs the work of two or more employees; and
- Has the authority to hire or fire other employees or whose suggestions and recommendations as to hiring, firing, advancement, promotion, etc. are given “particular weight.”

Administrative Duties Test

- “Primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers;” and
- Primary duty includes “the exercise of discretion and independent judgment with respect to matters of significance.”

Professional Duties Test

- “Primary duty is the performance of work (1) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or (2) requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.”

Third, employees whose compensation is \$100,000/year or more (i.e., “highly compensated employees”) will generally be deemed exempt. This exemption applies to all employees performing office or non-manual work who earn more than \$100,000 annually.

Conclusion. The new rule can significantly impact an employer’s obligation to pay overtime wages to certain employees. Employers should carefully consult the rule prior to August 23, 2004. If in doubt as to the rule’s application, you should contact your attorney.

BFW Company Culture: Giving Back to our Communities

By J. Kemper Will and Adrienne Abatemarco

By the nature of our business, Burns, Figa & Will, P.C. is actively involved in the ongoing process of aiding, improving and sustaining our communities. This culture of quality service extends not only to our clients, but also to the many community activities and pro bono services members of our firm partake in on a voluntary basis. We stand behind this company culture – an example of how to be good neighbors and stewards – and are proud of our efforts and proven track record of giving back and supporting our communities.

The following are just some of the examples of the community service and pro bono activities in which members of the Burns, Figa & Will family participate.

Partner Herrick Lidstone was appointed by Governor Bill Owens to serve on the Colorado Securities Board in 1999. The Board consists of five appointed members and provides oversight to the Colorado Securities Commissioner and the Security Commission on securities regulation in Colorado. The Securities Board is empowered to conduct hearings on orders issued by the Securities Commissioner and to hear appeals on orders issued by the Division of Securities. Herrick held the position of Vice Chair of the Board in 2000-2001, was elected Chair in 2002-2003 and was re-elected Vice Chair in 2004.

Since 1988, **Partner Geoff Anderson** has been a volunteer DJ with Denver jazz radio station, KUVO 89.3 FM. KUVO, a public radio station, is one of only a handful of full-time jazz stations left in the entire United States. Of special note, every second Tuesday of the month, the station hosts the high school/collegiate series, "Live at the Oasis", where local high school and college bands have the opportunity to play their music live, on-the-air, at the KUVO studios. Geoff can be heard Tuesdays from 7 –10 pm.

The firm's **Senior Attorney, Kemp Will**, has chaired a new charitable foundation, The Raymond Wentz Foundation, for the past two years. Raymond Wentz was a financially-strapped, but very resourceful, 17 year old who succumbed to a rare cancer. Raymond is the inspiration for the foundation named after him, whose mission is to provide supporting grants to financially-strapped cancer patients. The foundation raises funds from fundraising events, grants from other foundations and private and corporate donations. Kemp's wife Jody, a cancer survivor, works as a psychotherapist in the cancer clinic of Dr. David Schrier, Raymond Wentz' oncologist and the founder of the foundation. Kemp's secretary, Adrienne Abatemarco, has also been a tremendous supporter of the foundation, assisting with grant applications and communications with board members, volunteers, and grant applicants.

Senior Associate Attorney, Scott Clark, has served on the Site Acquisition Committee for Habitat for Humanity of Metro Denver for over nine years, helping to locate, obtain, and prepare for development the sites on which Habitat for Humanity builds homes. Scott has served as the Chair of the Committee since approximately 1998 and received an award from Habitat for Humanity for his outstanding service in 2002. Habitat for Humanity uses volunteer labor to build simple, decent affordable homes for low income families. Habitat is most famous for building homes with its volunteer work force. According to Scott, "Many people do not realize that volunteers also perform much of the behind the scenes work for Habitat for Humanity, including fundraising, public relations, family selection and construction site acquisition." Scott has been nominated to the Board of Directors for Habitat for Humanity of Metro Denver and will begin his service in that capacity in 2005.



Associate Attorney Alix Joseph has been a member of the Board of Directors of the Mountain Prairie Council of the Girl Scouts of America (GSMPC) for the past two years. GSMPC is the local council for the northeastern part of Colorado, running the Girl Scouting program for that area while promoting the Girl Scout mission. Each council has its own bylaws, and Alix has helped GSMPC to revise theirs. She has also assisted with the Council Performance Assessment Program, a program that ensures that a council's programs are consistent with the Girl Scout's national goals.

Paralegal Jan Reed tutors a Bosnian refugee family in English while helping them with their transition into the United States. Jan works through the Colorado Refugee Services Program, a state-run program that assists refugees in learning basic English, getting jobs and assimilating into society and culture. She also volunteers with the Rocky Mountain Survivors Center (RMSC), which provides legal assistance to refugees who were victims of torture in their country of origin. The RMSC provides much-needed psychological help as well as assists them in learning the English language while teaching specific life skills, such as riding the bus, making banking transactions and other skills necessary for day-to-day living. At the RMSC, Jan will be conducting research on various countries and the circumstances preventing refugees from returning to their countries of origin.

Secretary Tricia Byrne is a volunteer at her church, providing food to homeless persons. Every Sunday, Tricia and her children, Calvin, 10, Reed, 7 and Marianne, 3 deliver bread and pastries from a local bakery to various homeless shelters in Denver, including the Street Reach Center, Urban Peak and the Denver Rescue Mission. According to Tricia, "My children love to come along and help distribute the bread. Helping the less fortunate provides a valuable and necessary lesson to my children and shows them the importance of helping others."

J. Kemper Will heads the environmental and water law practice group at Burns, Figa & Will, P.C. and is active in environmental litigation and regulatory matters and contaminated property transactions. You can reach Mr. Will at 303.796.2626 or kwill@bfw-law.com

Adrienne Abatemarco is a legal secretary with Burns, Figa & Will, P.C. She joined the firm in 2000 and has worked with Mr. Will since 2002.

Firm News

- **Lee E. Miller** will be teaching the section, “**Complying with Environmental and Special Use Regulations**” at the “**Land Use Law Update in Colorado**” seminar September 8, 2004. Sponsored by NBI Seminars, this event is an intermediate level program designed for business, real estate and environmental law practitioners, developers, engineers, industry managers and local zoning/land use officials who want to get advanced insight into land use issues. To register call 1-800-930-6182.
- **Geoff Anderson** will conduct a seminar September 15, 2004 entitled, “**Real Estate Litigation**”. Seminar highlights include: The quiet title action: when to use it, how to use it, ethics issues in real estate litigation, access: one way or the other, real estate deals gone bad, title insurance and real estate litigation. For more information, contact Burns, Figa & Will, P.C. or Lorman Education Services at www.lorman.com
- **Stephen Leonhardt** will speak on “**Ethics and Water Law**” at the annual Colorado Water Law Seminar November 3, 2004 sponsored by the Colorado Water Congress. The seminar provides a comprehensive introduction to Colorado water law and water organizations. For more information on this seminar, contact the Colorado Water Congress at www.cowatercongress.org or Burns, Figa & Will, P.C.
- **Kristy Hartl** joined Burns, Figa & Will, P.C. as an associate. Ms. Hartl has earned a number of academic awards, including the American Jurisprudence Award in Federal Income Taxation. She served as a judicial clerk for various judges at the Hartford Superior Court in Hartford, Connecticut and for Judge John R. Webb with the Colorado Court of Appeals. A member of the American, Colorado and Denver Bar Associations, as well the Denver Tax Association, Ms. Hartl will focus her practice in Business Law, Mergers and Acquisitions, Tax Planning and Securities and Corporate Finance.
- **Geoff Anderson, Scott Clark and J. Kemper Will** will conduct a seminar November 19, 2004 entitled, “**A year in the Life of a Development Deal: Land Use Impacts on Real Estate Transactions.**” For more information, contact Burns, Figa & Will, P.C. or Lorman Education Services at www.lorman.com.
- **Herrick Lidstone** is participating in a seminar sponsored by The National Business Institute of Eau Claire, Wisconsin. This event takes place in December 2004, entitled, “**Drafting Limited Liability Company and Limited Liability Partnership Agreements in Colorado.**” For more information about this seminar, contact Burns, Figa & Will, P.C.
- **Herrick Lidstone** was featured in the July 2004 Colorado Lawyer Magazine with his article, “**Sarbanes-Oxley Act of 2002: Impact on Private Companies and their Attorneys.**” This article is a follow-up piece to the article, “**Am I My Brother’s Keeper? Redefining the Attorney-Client Privilege,**” published in the April 2003 issue of Colorado Lawyer.
- **Geoff Anderson** was recently featured in the June 1, 2004 issue of BottomLine Personal with his article “**Beware: The seller may not own the land’s mining and drilling rights.**”