TABLE OF CONTENTS

The New DOL Overtime Regulations – A Brief Report .................................................1
The Victim and the Criminal Justice Process ...............................................................2
News and Announcements .............................................................................................4
Call for Article Submissions .........................................................................................4

The New DOL Overtime Regulations – A Brief Report

By: Amelia Lo

Just last month, the Department of Labor released regulations regarding overtime exemptions in the Fair Labor Standards Act, which will take effect on the 1st of December 2016.

Rationale
President Obama said, “a hard day’s work deserves a fair day’s pay” is the way “America should do business,” and requested the Department of Labor ensure that there are protections against overtime work without fair compensation. After receiving and considering some 270,000 comments and suggestions, the Department of Labor formulated the guidelines and came up with the new rules.

Who may be affected?
According to the Department of Labor, more than 4 million US workers, who do not already have solid overtime work compensation provisions in their contracts, including their employers, will be affected, as early as in the first year of implementation. Provided that their employers do not adjust their base wage to account for the potential costs of overtime, female and minority workers are likely to welcome the new law, which can increase the chance that that they are adequately compensated for labor. The effect of the law on small-to-medium-size businesses is unclear at first blush. While some businesses may suffer from increase in labor costs due to the need to compensate their workers, other businesses may benefit from increased productivity since workers are asked to work up to 40 hours a week.
Possible Implications
Currently, the Rules, which will be modified according to the rate of inflation or deflation on a 3 year basis, require qualifying employers to pay their employees at least the federal minimum wage, as well as overtime premium pay of one-and-one-half times the employee’s regular rate of pay for all hours worked over 40 in a workweek, with a number of possible exemptions.

To ensure compliance with the new rules in which eligible white collar workers earning less than $913 a week can receive overtime pay, businesses, regardless of whether they have done so in the past, will need to start recording the number of working hours completed by their workers each day. Employers will have to formulate strategies to ensure that workers record their time efficiently, effectively, and accurately.

Time recording can be done manually via a physical attendance register sign-in-sign-out sheet, either individual or group based. Time recording clocks and equipment may also be popular choices, since they are relatively cheap and convenient to use. To those of us in the legal industry, time recording software and apps may also be an option. All these methods have their pros and cons: some may require that employees be trained to use the technology, and adjustment times may be required to instill in employees the habit of recording time. To prevent an overtime obsession which may result in burnout to employees and increased production costs to employers, employers may also want to emphasize quality over quantity and motivate their workers to work more efficiently, instead of staying later!

This article is for informational purposes and does not constitute legal advice.

About the Author: Amelia Lo is a trainee solicitor in Hong Kong since September 2014 and has been admitted to practice law in the State of New York. She is the vice-chairlady of the Hong Kong Federation of Women Lawyers Organizing Committee and the Corporate Restructuring Committee, and an organizing committee member of the Cross Strait Four Regions Young Lawyers Forum of the Law Society of Hong Kong. Amelia was one of two young lawyers sponsored by the Law Society to attend the Commonwealth Law Conference in Glasgow as part of the 4-member delegation in 2015.

The Victim and the Criminal Justice Process

By: Kahlida Nicole Lloyd

When you think of who is involved in the criminal justice process, many people, even lawyers, will say the Prosecutor and the Defendant- those are the parties at the table. However, there is another person “at the table”- the Victim. Every crime has a victim. For the Prosecutor the victim is the Government’s witness. For the defendant, the victim is her or his accuser. For the victim, he or she is a justice seeker. There are three people at the table: the Prosecutor, the Defendant and the Victim.

A victim is a person who has been directly harmed by a crime that was committed by another person. Simple enough. But a victim is also someone who has rights. Just like the defendant in a criminal investigation and case has rights, the victim also has rights.
All states and the federal government have passed laws to establish a set of victims’ rights. In general, these laws require that victims have certain information, protections, and a role in the criminal justice process. Victims’ rights depend on the laws of the jurisdiction where the crime is investigated and prosecuted, including the state, federal or tribal government, or military installation.¹

18 U.S.C. § 3771 promulgates the Crime Victims’ Rights Act and enumerates the federal rights of victims.

Under this law, a crime victim has the following rights:

1. The right to be reasonably protected from the accused.
2. The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
3. The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
4. The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
5. The reasonable right to confer with the attorney for the Government in the case.
6. The right to full and timely restitution as provided in law.
7. The right to proceedings free from unreasonable delay.
8. The right to be treated with fairness and with respect for the victim’s dignity and privacy.

These rights were not taught to me in my first year Criminal law class or in my Criminal Procedure class or even in my Criminal Justice seminar course. Law school didn’t teach me that there was a third person “at the table,” the practice of law did. The opportunity to represent victims of crime, primarily victims of domestic violence and sexual assault in the criminal justice system taught me that their voice must be at the table. Crime Victims’ Rights is a body of law that gives victims a role in the criminal justice process- gives them an opportunity for their voice to be heard. Victims are more than just a witness. Victims are more than just an accuser. Victims are justice seekers. For each victim, justice looks different: some want their perpetrator locked up and the key thrown away, some want their perpetrators admittance of the crime, some want the criminal justice system (law enforcement and prosecutors) to do their jobs. Justice looks different for each victim.

If you have represented a victim, they have rights.

If you been a victim, you have rights.

Use them, get justice.

Resources:
National Center for Victims of Crime is a trusted source of current information on Victims’


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Network for Victim Recovery of D.C. is a nonprofit organization that provides social services and legal support and representation to victims of crime in the nation's capital. Visit www.nvrdc.org for more information.

About the Author: Kahlida Nicole Lloyd is a former Staff Attorney at Network for Victim Recovery of DC in Washington, DC and is a Government, Military, and Public Sector ABA YLD Scholar. She can be reached at kahlidalloyd@gmail.com.

NEWS AND ANNOUNCEMENTS

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ABA's Annual Meeting

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Tentative schedule

Register here

For more information, check out the website for the annual meeting.

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