Legal INSIGHTS
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General Assembly Passes New Laws Affecting Fire Service

by John H. Kelly

The Spring session of the 103rd Illinois Senate and House of Representatives wrapped up on May 27th. Much of the session focused on adopting the budget for the State of Illinois. There were several bills that were passed by the Legislature that affect the fire service in the State. The Illinois Fire Caucus asserted its presence in Springfield and provided a voice for the fire departments and fire protection districts across the State. This article provides an overview of some of that legislation.

Senate Bill 2879 (SB 2879) was passed by the legislature and recently signed by Governor Pritzker. This piece of legislation, now designated as Public Act 103-0634, amends Section 11k the Fire Protection District Act, 50 ILCS 705/11k. Section 11k of the Fire Protection District Act provides guidelines for fire protection districts regarding the bidding requirements for fire district purchases.

The amendment to Section 11k is effective on January 1, 2025. The language of P. A. 103-0634 expands the opportunities for fire districts to make purchases which do not require employing the bidding process. While the general requirement that purchases of all materials, services, and work which exceed $20,000.00 must be made subject to a competitive bidding process as outlined in the Act, this amendment allows fire protection districts to make purchases directly from a "dealer or original manufacturer" in an amount up to $50,000.00 without the necessity of using the bidding process. This change should make it easier for fire departments to make purchases of firefighting equipment which are typically made from designated vendors of up to $50,000.00. While the initial proposed amendment to Section 11k sought to raise the bidding requirement limitation to $30,000.00 for all purchases, significant opposition from the construction trades required a compromise. While the threshold for bidding on these direct purchases has been raised, the remainder of the bidding law is unchanged. Fire districts who have questions regarding purchases and the application of the bidding law and the revisions provided by P. A. 103-0634 should consult their legal counsel for advice.

House Bill 4359 provides relief to fire protection districts which have faced challenges to accumulations of property tax funds designated for special purposes. Historically, fire districts have set aside funds to pay for larger capital projects like buildings or vehicle purchases. Since the most significant source of fire district funds is the property tax, tax objectors have challenged these accumulations as being excess, arguing that if the district can accumulate taxpayer monies, then, perhaps, the tax rate or extension should be lowered. These tax objections generally are based on the theory that Section 14 of the Fire Protection District Act only allows these types of accumulations in the corporate fund of the district 50 ILCS 750/14. House Bill 4359, will allow fire districts to specifically accumulate funds for the purposes of acquiring, building, or maintaining real property, procuring EMS or rescue vehicles or equipment, or training EMS or rescue teams. Given today's extensive lead times for the purchase of ambulance or rescue vehicles, the ability to accumulate funds to make those purchases and not be challenged by tax objectors is a welcome relief for fire departments.

Another bill of interest is SB 3648. This legislation extends the effective date of the Community Emergency Support and Services Act (CESSA) to July 1, 2025. Readers may recall that this law seeks to transition response to mental health emergencies to designated mental health professionals. The text of the law established a State oversight committee and regional groups to implement the requirements of the Act. The fire service has been involved in these regional meetings. Some progress has been made in establishing the infrastructure necessary to make this transition, however much work remains to be done. Given the status of this project it seems that the extension of the implementation date to July 1st of next year is appropriate. On July 1, 2024, Governor Pritzker signed this bill into law as P. A. 103-0645.

Continued on page 2

TABLE OF CONTENTS

General Assembly Passes New Laws Affecting Fire Service
- John H. Kelly — *Page 1*

AI Passes the Bar?
- Joseph S. Davidson — *Page 3*

Felony Forfeiture of Public Pension Benefits: A Cautionary Tale
- Brian Johnston and John Motylinski — *Page 4*

New Laws for the Upcoming School Year
- Maureen A. Lemon — *Page 5*

Department of Labor Updates FLSA Exemption Rules: What Employers Need to Know
- Adam Hudoba — *Page 6*

Federal Rule Restricts Administrative Requests by Law Enforcement for HIPAA-Protected Medical Records
- Michael Castaldo III — *Page 7*

Ottosen DiNolfo Hasenbalg & Castaldo, Ltd.'s newsletter, Legal Insights, is issued quarterly to keep clients and other interested parties informed of legal developments that may affect or otherwise be of interest to its readers. Due to the general nature of its contents, the comments herein do not constitute legal advice and should not be regarded as a substitute for detailed advice regarding a specific set of facts.

Questions regarding any items should be directed to:

OTTOSEN DINOLFO HASENBALG & CASTALDO, LTD.
1804 N. Naper Boulevard, Suite 350
Naperville, Illinois 60563
630-682-0085 www.ottosenlaw.com

John Motylinski, Editor
jmotylinski@ottosenlaw.com

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General Assembly Passes

Continued from page 1

One piece of legislation that was watched very closely is the Paid Leave for Firefighters Act, HB 3908. This bill was first introduced in 2023. The bill provided for a period of 6 weeks of paid family leave for firefighters on the birth, placement, or adoption of a child or to care for a seriously ill family member. This leave would only be available to employees who have been employed for at least one year. This period of leave would be available regardless of the employer's other leave policies. While this bill enjoyed strong support in the House, the bill was placed in the Assignments Committee of the Senate and was not acted upon prior to the adjournment of the session. The bill may receive additional consideration in the Fall Veto Session.

If you or your fire protection district have questions regarding any piece of legislation, please do not hesitate to contact the Illinois Fire Caucus or the lawyers at Ottosen Law.

Ottosen DiNolfo Successfully Defends Against $15.4 Million Lawsuit

During a recent eight-day jury trial, Steve DiNolfo and Meganne Trela obtained a defense verdict in favor of a unit of local government in a case involving alleged paramedic medical malpractice.

The complaint asserted that the paramedics showed a conscious disregard or utter indifference for the patient after accepting a refusal of transport from a 77-year-old woman who fell and struck her head, which resulted in an abrasion. The patient, who was on a blood thinner, refused treatment and transport after being advised of the risks of refusing. Later that same day, the patient recontacted 911 complaining of a severe headache and continued bleeding from the site of the injury. The patient was transported to the hospital, where she quickly deteriorated due to subdural hematoma, which caused a midline shift and necessitated a craniotomy. The patient never regained consciousness and died 13 days later. The patient's estate asked the jury for $15.4 million. The jury came back with a not guilty verdict in favor of the paramedics and fire district.

AI Passes the Bar?

by Joseph S. Davidson

In the past year, advancements in AI technology have captured the public's fascination. With more systems being made available to the public, AI has progressed from the imaginary to an imminent reality. However, the prospect of widespread adoption of AI technology has also triggered numerous concerns, as the technology threatens to radically alter many aspects of life and work.

As with many other industries, the advancement and integration of AI technology promises to make the practice of law more efficient and cost-effective. In fact, AI technology has already been incorporated into the practice of law. For example, AI technology has long been used in the review of legal documents, to automate discovery, and to aid in legal research. Despite AI technology's great potential however, legal professionals and clients alike must consider the potential risks associated with this emerging technology.

One of the more well-known dangers posed by AI is "hallucination," or the generation of false information. Generative AI systems create new content, including text, images, audio, code, and video. For example, ChatGPT responds to a user's textual prompts with natural-language responses. The generation of incorrect information is due to ChatGPT's very design. ChatGPT does not access a database to generate its responses; instead, the chatbot is a "language model" that has been trained on large amounts of data to recognize language patterns and generate responses it predicts are relevant to a user's prompt.

The risk that generative AI can generate incorrect information came to the forefront in *Mata v. Avianca*, No. 22-cv-01461 (PKC) (S.D.N.Y.), in which a lawyer submitted nonexistent cases generated by ChatGPT.

Roberto Mata's lawsuit began like so many others: he sued the airline Avianca, saying he was injured when a metal serving cart struck his knee during a flight to New York. When Avianca asked the judge to dismiss the case, Mata's lawyers submitted a 10-page response that cited more than a half a dozen relevant court decisions. There was just one hitch: No one—including the airline's lawyers or the court—could find the decisions or the quotations cited and summarized in the brief.

Avianca's lawyers wrote to the court, saying they were unable to find the cases that were cited in the brief. Nor were they able to find traces of the quoted materials in the cited cases elsewhere.

The court ordered Mata's attorneys to provide copies of the opinions referred to in their brief. The lawyers submitted a collection of eight; in most cases, they listed the court and judges who issued them, the docket numbers, and dates.

Eventually, the attorney who prepared the brief threw himself on the mercy of the court, saying in an affidavit that he had used ChatGPT to do his legal research—"a source that has revealed itself to be unreliable." The attorney told the court that he had no intent to deceive the court or Avianca. The attorney said that he had never used ChatGPT, and "therefore was unaware of the possibility that its content could be false." In fact, he told the court, he asked the program to verify that the cases were real. It had said "yes." The outcome was not pretty for the attorney, who was monetarily sanctioned for his "subjective bad faith."

Like most other industries, AI has shown the potential to add value to clients and the legal profession. It has the potential to revolutionize the way legal services are provided. However, while the potential of this new technology continues to evolve, legal professionals and clients must be wary of its potential risks.

Felony Forfeiture of Public Pension Benefits: A Cautionary Tale

by Brian Johnston and John Motylinski

In the realm of public service, the promise of a secure retirement pension is often a significant factor in attracting and retaining dedicated professionals. However, for Illinois firefighters and police officers, this promise comes with a crucial caveat: being convicted of a felony related to one's public service can result in pension forfeiture. This serves as a stark reminder of the high ethical standards expected of those who serve the public trust.

The Illinois Pension Code is unequivocal that "[n]o benefits shall be paid to any person who is convicted of any felony relating to or arising out of or in connection with service as a firefighter." Furthermore, no pension benefits "shall be paid to any person who otherwise would receive a survivor benefit who is convicted of any felony relating to or arising out of or in connection with the service of the firefighter from whom the benefit results." Illinois courts have given these provisions their ordinary meaning, as illustrated recently in *Trapp v. City of Burbank Firefighters' Pension Fund*, 2024 IL App (1st) 231311.

Trapp v. City of Burbank Firefighters' Pension Fund

John Trapp's story is a stark reminder that, even after retirement, one's on-duty misdeeds can have far-reaching consequences.

Trapp began his career with the Burbank Fire Department in 1988. By January 2017, after nearly three decades of service, he had become eligible for retirement benefits. However, his career ended under a cloud of suspicion. Allegations arose concerning inappropriate conduct vis-à-vis a 17-year-old intern. Despite these accusations, the City of Burbank's pension board approved his retirement pension.

The situation took a dramatic turn in December 2019 when Trapp was charged with possessing child pornography. Trapp eventually pleaded guilty. As part of his plea, Trapp admitted that he had a sexual relationship with the intern while he was working as a firefighter. Pictures and videos were generated and kept by Trapp in the course of this relationship. He was convicted of a felony and sentenced to six months' incarceration.

The Burbank Firefighters' Pension Fund's Board of Trustees convened a hearing to determine whether Trapp's felony conviction should result in the forfeiture of his pension benefits. Trapp argued that the Board lacked the authority to revoke his pension, asserting that his conviction occurred post-retirement and that the initial pension award was irrevocable.

The Board conversely found that it had jurisdiction. It then determined that Trapp's felony was directly related to his employment, triggering the forfeiture clause in Section 4-138 of the Illinois Pension Code.

The appellate court upheld the Board's decision to strip Trapp of his pension. The court clarified that the Board's action was not a reversal of its initial decision. Instead, it was a new action based on new information: Trapp's felony conviction.

The court therefore sent a clear message: pension boards have the authority—and the responsibility—to revoke benefits when presented with evidence of service-related felonies, even if that evidence comes to light after retirement.

Conclusion

Trapp's case and the broader statutory framework highlight the critical importance of maintaining ethical conduct throughout one's career in public service. For firefighters, police officers, and other public employees, the message is clear: upholding the law and maintaining professional integrity is not just a matter of job performance, but a lifelong commitment that directly impacts their financial future. Breaching that obligation could mean forfeiting one's retirement benefit.

Please Join Us for our 2024
Back to School Fall Legal Conference

Wednesday, September 11, 2024
8:00 a.m. to Noon

Continental breakfast and lunch will be served

Attendance can be in person or Via Zoom
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For More Information
Contact Lynne Andrews 630.614.7623
landrews@ottosenlaw.com

New Laws for the Upcoming School Year

by Maureen A. Lemon

Our annual School Law Conference takes place on September 11, 2024 from 8 a.m. – noon in Lisle. We will provide a comprehensive summary of federal and State changes which impact your schools at that time. Registration details are available on our website. In the meantime, we want to share some important legal updates as you prepare for the 2024-2025 school year.

Racism-Free Schools Law (P.A. 103-0472)

Effective August 1, 2024, several Illinois statutes were amended to further protect students from discrimination and harassment in schools on the basis of actual or perceived race, color, or national origin. The Illinois Human Rights Act (IHRA) adds a new prohibition in elementary, secondary, or higher education against harassment, defined as any unwelcome conduct toward a student on the basis of "the student's actual or perceived race, color, religion, national origin, ancestry age, sex, marital status, order of protection status, disability, military status, sexual orientation, pregnancy, or unfavorable discharge from military service that has the purpose or effect of substantially interfering with a student's educational performance or creating an intimidating, hostile or offensive educational environment."

A new section 22-95 was added to the Illinois School Code, 105 ILCS 5/22-95, that requires all Illinois schools to maintain a written policy that prohibits discrimination and harassment on the basis of actual or perceived race, color, or national origin, and retaliation. The policy must include:

1. descriptions of various forms of unlawful harassment and discrimination, including examples;
2. the district's internal process to file a complaint;
3. an overview of the district's program to prevent and respond to such complaints;
4. potential remedies for a violation of the policy;
5. a prohibition on retaliation for making a complaint or participating in an investigation;
6. the legal recourse available through the Illinois Department of Human Rights (IDHR) and federal agencies; and
7. directions on how to contact the IDHR.

Each district's prevention and response program must include procedures which:

1. Reduce or remove barriers to reporting discrimination, harassment, and retaliation;
2. Permit anyone who reports an alleged incident to be accompanied by a support individual of their choice;
3. Permit anonymous reporting;
4. Offer remedial interventions or disciplinary actions on a case-by-case basis;
5. Offer, but not require, the option to resolve allegations directly with the accused; and
6. Protect a person who reports or is a victim of an incident of harassment or retaliation from suffering adverse consequences as a result of their involvement in the matter.

The district must educate its employees, students and parents about the policy. The policy must be posted on the District's website if one exists, posted in a prominent and accessible location and distributed to all employees, and published in student handbooks. Additionally, districts must annually distribute a summary of the policy in accessible, age-appropriate language to students and parents in their native language.

A new section will be added to the IHRA, 775 ILCS 55A-103, that will require school districts to train new employees and current employees on a 2-year rotation on the prevention of discrimination and harassment based on race, color and national origin. School districts may use the free model training program that is being developed by the IDHR or another program that equals or exceeds the content of the model training program. Among its many attributes, the model program regards participants as potential bystanders rather than potential offenders; explains the difference between discrimination based on disparate treatment and that based on disparate impact; and explains the difference between harassment and bullying.

Office for Civil Rights Title VI Facts Sheet

On July 2, 2024, the U.S. Department of Education's Office for Civil Rights (OCR) published a fact sheet summarizing schools' obligations to protect students from discrimination and harassment under Title VI of the federal Civil Rights Act of 1964.

Continued on page 8

Department of Labor Updates FLSA Exemption Rules: What Employers Need to Know

by Adam Hudoba

The U.S. Department of Labor ("DOL") has issued a final rule that significantly alters the landscape of overtime pay exemptions under the Fair Labor Standards Act ("FLSA"). Effective July 1, 2024, this new rule updates certain exemptions from overtime pay requirements for executive, administrative, professional, and highly paid employees in two major ways. First, the rule raises the minimum salary levels required for employees to qualify for these exemptions. Second, the rule establishes a mechanism for automatically updating these thresholds every three years, starting July 1, 2027. Employers who fail to adjust accordingly may subject themselves to liability.

The FLSA

The FLSA is a federal law that establishes minimum wage, overtime pay, recordkeeping, and youth employment standards for workers in the private sector and in federal, state, and local governments. The FLSA requires employers to pay non-exempt employees at least the federal minimum wage for all hours worked, as well as overtime pay at not less than time and one-half the regular rate of pay for all hours worked over certain thresholds (e.g., 40 in a workweek). However, the FLSA exempts certain employees. Teachers, for instance, are exempt from both minimum wage and overtime requirements regardless of salary level. There are also "white-collar" exceptions for those in executive, administrative, and professional positions, as explained below.

The White-Collar Exemptions

Qualifying as a white-collar worker under the FLSA means that the employee need not be paid overtime. To be eligible for a white-collar exemption, an employee must generally pass three tests:

1. Salary Basis Test: The employee must be paid a predetermined and fixed salary not subject to reduction based on work quality or quantity.
2. Salary Level Test: The employee must earn at least the minimum salary set by the DOL.
3. Duties Test: The employee's primary duties must involve executive, administrative, or professional work as defined by the regulations.

The DOL's new rule modifies the second prong. Previously, the threshold to qualify as a white-collar worker would only need to make $684 per week ($35,568 annually). But beginning July 1, 2024, this sum has increased to $844 per week ($43,888 per year). Additionally, on January 1, 2025, this threshold will further grow to $1,128 per week ($58,656). Therefore, in the new year, an office employee making less than $58,656 will not be exempt under the FLSA.

The Highly Compensated Employee Exemption

The new rule also modifies the Highly Compensated Employee ("HCE") exemption, which applies to employees who:

1. Earn total annual compensation above a specified threshold;
2. Primarily perform office or non-manual work; and
3. Regularly perform at least one of the exempt duties outlined in the white-collar exemptions.

Before the rule was amended, an HCE had to earn at least $107,432 annually. Effective July 1, 2024, that sum is now $132,964 per year, and it will rise to $151,164 annually beginning January 1, 2025.

Automatic Updates

Importantly, the new rule provides that these salary thresholds will automatically update. Beginning July 1, 2027, and every three years thereafter, the DOL will update the salary thresholds for both the white-collar and HCE exemptions using current wage data.

Impact on Employers

These changes will require employers to reassess their workforce and potentially make significant adjustments to employee classifications and compensation structures. Employers should therefore:

1. Review current employee classifications and salaries to identify those affected by the new thresholds.
2. Determine whether to increase salaries to maintain exempt status or reclassify employees as non-exempt.
3. For reclassified employees, implement systems to track hours worked and calculate overtime pay.

Continued on page 8

Federal Rule Restricts Administrative Requests by Law Enforcement for HIPAA-Protected Medical Records

by Michael Castaldo, III

The United States Department of Health and Human Services just made it harder for law enforcement officers to obtain medical records from entities covered by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

Under HIPAA's Privacy Rule, covered entities (including fire departments, hospitals, and other healthcare firms) are required to safeguard their patients' Protected Health Information ("PHI") and refrain from disclosing it to third parties without authorization. However, there are exceptions. Among other things, a covered entity can disclose PHI to law enforcement officers:

To report PHI to a law enforcement official reasonably able to prevent or lessen a serious and imminent threat to the health or safety of an individual or the public.

- To report PHI that the covered entity in good faith believes to be evidence of a crime that occurred on the premises of the covered entity.
- To alert law enforcement to the death of the individual, when there is a suspicion that death resulted from criminal conduct.
- To alert law enforcement to criminal activity when responding to an off-site medical emergency.
- To report PHI to law enforcement when required by law to do so (such as reporting gunshots or stab wounds).
- To respond to a request for PHI for purposes of identifying or locating a suspect, fugitive, material witness or missing person (so long as the information is limited to basic demographic and health information about the person).
- To comply with a court order, warrant, subpoena, or an "administrative request."

By issuing a new regulation, the Department has changed the landscape concerning the "administrative request" exemption.

Previously, covered entities could give PHI to law enforcement agencies in response to an "administrative request," provided the request: (i) was relevant and material to a legitimate law enforcement inquiry; (ii) was specific and limited in scope to the extent reasonably practicable; and (iii) stated that de-identified information could not reasonably be used. 45 CFR §164.512(f)(1)(ii)(C). This exception was commonly understood to mean that a request on letterhead by a law enforcement agency affirming these three requirements was sufficient to permit disclosure of the requested protected health information to law enforcement.

Through its new rule, the Department clarified that a mere letter reciting this magic language was not enough to circumvent the Privacy Rule's guarantee of confidentiality. Indeed, the Department found that the widely accepted interpretation of the "administrative request" exemption was incorrectly applied and inconsistent with HIPAA's goals. The Department explained that clarification was necessary to ensure that any disclosures of PHI to law enforcement agencies are necessary and limited in scope.

Therefore, as of June 25, 2024, the "administrative request" exception now only permits the disclosure of PHI by covered entities where a response to such request is required by law. Thus, the days of boilerplate law enforcement letters seeking HIPAA protected medical records are over.

To properly use the administrative request exemption, the request must now come in the form of an administrative subpoena, summons, or an authorized investigative demand authorized by statute. In addition, such request by a law enforcement agency has to affirm that it: (i) is relevant and material to a legitimate law enforcement inquiry; (ii) is specific and limited in scope to the extent reasonably practicable; and (iii) states that de-identified information could not reasonably be used.

Failure to properly observe the new administrative request exception may result in fines by the Department. Thankfully, the Department has given covered entities a 180-day grace period to adopt updated policies and procedures that align with this clarification before it will assess any penalties.

Importantly, this update is specific only to administrative requests for PHI. It does not affect the other exceptions that would allow disclosing HIPAA-protected materials to law enforcement without violating the Privacy Rule.

Moving forward, it is imperative to review your current procedures to ensure that these changes are fully understood. Municipalities should ensure their police departments are no longer issuing old school "administrative request" letters. Similarly, fire departments should carefully analyze law enforcement requests for PHI, as they may not be compliant with the Department's new rule. For any additional questions regarding how this final rule might affect your existing practices, please reach out to one of the attorneys.

Upcoming School Year

Continued from page 5

The Title VI fact sheet addresses the same topics and is a good resource for schools as they develop and implement their policy under the Racism-Free Schools Law.

Cardiac Emergency Response Plan (P.A. 103-0608)

Effective January 1, 2025, the School Safety Drill Act will be amended by adding a new section 60 that requires school districts to develop a cardiac emergency response plan. 105 ILCS 128/60. The plan, based on guidelines of the American Heart Association or other nationally recognized, evidence-based standards, must address the appropriate response to incidents involving an individual experience sudden cardiac arrest or a similar life-threatening emergency while at a school or school-sponsored activity or event. The plan shall include, at a minimum:

1. Procedures to follow in the event of a cardiac emergency;
2. A listing of every automated external defibrillator (AED) that is present and clearly marked or easily accessible at school athletic venues and events and at school, including the maintenance schedule for such devices;
3. Information on hands-only cardiopulmonary resuscitation (CPR) and use of automated external defibrillators to teachers, administrators, coaches, assistant coaches, and other school staff identified by school administrators.

The plan, which must be distributed to all teachers, administrators, school support personnel, coaches, and other school staff identified by school administrators, is to be reviewed as part of the school district's annual review of each school building's emergency and crisis response plans, protocols, and procedures. 105 ILCS 128/25.

Additionally, beginning in the 2025-26 school year, school districts will be required to provide, no later than 30 days after the first day of each school year, all teachers, administrators, and other school personnel as determined by school officials, information regarding emergency procedures and life-saving techniques, including, without limitation, the Heimlich maneuver, hands-only CPR, and use of the school district's AEDs. 105 ILCS 110/3.

ANCRA Mandated Reporting (P.A. 103-0624)

Effective January 1, 2025, two changes will impact school activity under the Abused and Neglected Child Reporting Act, 325 ILCS 5/ . The first change affects the final "indicated" finding report that is sent to the school of a child who is the indicated victim of child abuse. If the indicated finding is overturned in an appeal or hearing, DCFS shall request that the final finding report be purged from the student's record. Currently, school districts must return the purged report to DCFS. Effective January 1, 2025, school districts will not be required to return the final finding report that has been purged from the student's school student record.

Second, mandated reporters will no longer have to confirm reports made to the DCFS hotline in writing to the appropriate Child Protective Services Unit within 48 hours of the initial report. 325 ILCS 5/7. However, we strongly recommend that you maintain an internal system through which staff members complete a thorough summary of the facts justifying their initial report. This record-keeping will protect your staff against allegations of making false reports as well as support your staff's recall if they are required to testify in a DCFS matter.

FLSA Exemption Rules

Continued from page 6

4. Update payroll systems and processes to accommodate the new salary thresholds and potential reclassifications.
5. Plan for future threshold increases, both the scheduled January 1, 2025, increase and subsequent updates.

Conclusion

The DOL's new rule represents a significant change in overtime exemption regulations. By proactively addressing these changes, employers can minimize compliance risks, avoid potential wage and hour violations, and ensure fair compensation for their workforce. It is therefore crucial for employers to review their current practices and seek legal counsel if needed to navigate these complex regulatory changes effectively.

1804 N. Naper Blvd., Suite 350
Naperville, IL 60563
630.682.0085 | www.ottosenlaw.com