LEGAL UPDATES

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Resident Assistant and Resident Director Coverage Under the FLSA

Service

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In light of recent challenges to the U.S. Department of Labor (DOL) guidance about the classification of resident assistants (RAs) and resident directors (RDs) under the Fair Labor Standards Act (FLSA), it is important that institutions of higher education understand the dynamics at play when dealing with these issues.

Background

Standing DOL guidance indicates that, while resident assistants generally **are not** employees under the FLSA, resident directors **are** employees. The Department of Labor's Field Operations Handbook states:

(a) University or college students who participate in activities generally recognized as extracurricular are generally not considered to be employees within the meaning of the Act…[S]tudents serving as residence hall assistants or dormitory counselors, who are participants in a bona fide educational program, and who receive remuneration in the form of reduced room or board charges, free use of telephones, tuition credits, and the like, are not employees under the Act.

(b) On the other hand, an employment relationship will generally exist with regard to students whose duties are not part of an overall educational program and who receive some compensation. Thus, for example, students who work at food service counters or sell programs or usher at athletic events, or who wait on tables or wash dishes in dormitories in anticipation of some compensation (money, meals, etc.) are generally considered employees under the Act.

Although there have been recent challenges to the classification of RAs as non-employees, the DOL's interpretation has not yet been overturned. So, provided

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the RAs are in school, they are likely not employees for federal minimum wage purposes.

Though guidance is limited, RDs appear to fall into category (b) of the DOL's classification because they are paid and thus would be considered employees for FLSA purposes. However, if RDs perform teaching duties (such as part of a management program), then they may be entitled to non-employee status because they are involved in an educational program.

It is less clear whether RDs qualify as exempt employees. To be classified as exempt, the RDs must meet the two-part test for exempt status: salary basis and duties. If a university compensates RDs with costs of tuition, RDs would not meet the salary basis prong. However, if a university choses to compensate RDs by paying them a salary in lieu of costs of tuition, they may meet the salary basis prong.

To meet the duties prong, the RD's primary responsibilities must fall under those covered by the administrative exemption. This analysis is fact-specific. To be considered under the administrative exemption, the RD's primary duties need to include exercising discretion/judgment over matters of significance. Matters of significance include, among other things, budgeting, spending, quality control, safety and health, finance, and managing policies/practices.

What This Means To You

Institutions of higher education often deal with issues regarding how to compensate RAs and RDs. In light of the recent challenges to the DOL's guidance and FLSA litigation, colleges and universities need to be aware that the standards by which they have been operating may change. If the DOL guidance is modified to state that RAs are employees under the FLSA, it would change the way many RAs are currently compensated. When dealing with issues about RDs, higher education institutions need to make a fact-specific inquiry into the RD's primary responsibilities and correctly classify them as either a non-employee or an exempt/non-exempt employee under the FLSA.

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