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CONFIDENTIAL ATTORNEY CLIENT PRIVILEGED MEMORANDUM

DATE: May 19, 2016

TO: Hotel Association of New York City, Inc.
Labor Relations Members
General Managers, Human Resources Directors and Controllers

FROM: Kane Kessler, P.C.
[Labor and Employment Practice Group](#)

RE: DOL Issues Overtime Rule

On May 18, 2016, the United States Department of Labor issued its long anticipated final Regulation (“Regulation”) governing overtime exempt salaried employees. Under the Fair Labor Standards Act, (“FLSA”), employees satisfy the “white collar” exemption where:

- (a) They are paid on a salary basis,
- (b) They receive at least \$455 per week, and
- (c) The employee satisfies the professional, executive, administrative or computer duties test.

To the relief of the business community, the Regulation did not alter the duties’ test. Those tests contained in the 2004 regulations are outlined in fact sheets posted on the Department of Labor website: https://www.dol.gov/whd/overtime/fs17a_overview.htm.

The Regulation doubles the salary test for exempt executive, administrative, and professional employees from \$23,660.00 to \$47,476.00 annually or from \$455.00 to \$913.00 per week. The highly compensated employee exemption is increased to \$134,004.00 from \$100,000.00. In another change, the Regulation permits employers to include non-discretionary bonuses, incentive payments and commissions to count for up to ten percent (10%) of the standard weekly salary in order to reach the income threshold so long as those payments are, at a minimum, paid on a quarterly basis. Employees who do not meet the salary test are non-exempt under the Fair Labor Standards Act and must be compensated at the rate of time and one-half for all hours worked over 40 per week.

A highly compensated employee need only meet one of the enumerated tests to demonstrate that he or she is not entitled to overtime. The salary threshold for a highly compensated employee will increase every three years, beginning on January 1, 2020 and will be tied to the 90th percentile of all full-time salaried employees.

The Regulation will impact low to mid-level employees that many employers have treated as exempt. The Regulation will force employers to scrutinize these jobs and the work performed to determine whether they should remain exempt, which may require a salary increase or adjustment in duties. Employers will also

be cognizant of the ripple effect upon other classifications that might occur when giving salary increases that are necessary to preserve the exempt status of certain other classifications. Alternatively, it may benefit employers to begin tracking exempt employee hours now in order to project potential overtime liability once the Regulation goes into effect on December 1, 2016.

We routinely close our Client Memoranda with a suggestion that the advice of counsel be obtained. That suggestion is extremely important in assessing and making changes to adapt to the Regulation, particularly given the plethora of wage-hour litigation.

If you have any questions, please do not hesitate to contact [David R. Rothfeld](#), [Robert L. Sacks](#), [Lois M. Traub](#), [Alexander Soric](#), [Michael C. Lydakis](#), [Jaclyn Ruocco](#) or [Jennifer Schmalz](#).

cc: Joseph E. Spinnato, President
Vijay Dandapani, Chairman

*This memo is provided for informational purposes only.
It is not intended as legal advice and readers should consult counsel to discuss how these matters relate to their individual circumstances.*