



Your Workplace Is Our Work®

Inside this issue:

Race and the Workplace
PAGE 1

Employee Freedom of Expression
PAGE 3

The Employment Aspects of PPP Loan
Forgiveness
PAGE 3

No Surprise: SCOTUS Rules Title VII
Includes LGBTQ
PAGE 5

COVID-19 Return to Work Fallout:
Unionization, Wage/Hour and Litigation
PAGE 6

OSHA Issues Guidance on Reopening
PAGE 7

COVID-19 Changes at the EEOC
PAGE 8

Wage and Hour Tips: Overtime Update
PAGE 9

Race and the Workplace

Black Lives Matter was formed in 2013 after George Zimmerman was acquitted in the shooting death of Trayvon Martin. The killing of George Floyd and others has resulted in Black Lives Matter becoming much greater than the issue of law enforcement and race – it's resulted in a reckoning of racial disparities in several regards, such as income, education and healthcare. Statues are coming down; names of forts, buildings and highways will change; and employers in all sectors have pledged financial support to address racial inequalities. Yet, the greatest responsibility for addressing racial disparities will be for employers to assess their policies and practices. Illegal discrimination is hard to prove. Thus, the absence of proven discrimination does not necessarily mean the presence of equal opportunity.

We by no means claim to be social scientists with a blueprint to address the scope of racial disparities. That said, we suggest employers consider the following:

1. "Racial disparities in access to wealth and wealth building are compounded by a lack of access to paid family and medical leave," according to the National Partnership for Women and Families (NPWF).
2. NPWF's research concludes that "people of color tend to receive lower quality health care services and experience worse health outcomes than white people, magnifying their need for paid family and medical leave." Furthermore, "women of color suffer most from the combination of these disparities and challenges."
3. According to NPWF, "the vast majority of working people in the United States – 85% - do not have paid family leave through their employers, and the consequences for people of color are especially severe."
4. Rarely are factors employers consider for hiring and promotions found to be discriminatory, yet certain factors may be a barrier to applicants/employees of color. For example, is a college degree truly necessary for all jobs that require it, particularly for promotions? If appropriate for the job, consider "college degree preferred" or "college degree or relevant experience required."



5. Assess your recruitment practices – do they reach those of color?
6. Consider adopting community work/study programs, especially at schools that are lower-income and/or primarily serve students of color. Wealthy and even middle-class children frequently benefit from having access to personal connections for job shadowing or (legally questionable) unpaid internships. Choose to formalize outreach to under-served communities and schools to extend the same access to others.
7. If making a workforce reduction or calling employees back to work after the COVID-19 shutdown, what factors do you consider and how are employees of color affected? For example, if it's seniority-based and that will result in a disproportionate adverse effect on race, consider whether a seniority-based approach is the only reasonable one. Are there other objective factors to consider which do not have such an adverse impact based on race? Also, remember that however well-intentioned, quotas or firm targets for representation are not lawful.
8. A leading plaintiff's attorney calls employer equal employment/non-discrimination statements "pretty policies." That is, they look good, but what does the employer do to be sure there is equal opportunity in training, mentoring and promotions?
9. Make those who recommend candidates for promotion justify their choices. Were minority candidates considered? If a promotion is based on who applies in response to a posting, were employees of color encouraged to apply? To an employee of color, if the promotion decision-makers are white, the perception to the employee of color may be that he/she will not be seriously considered – even if that perception is wrong.
10. Make a commitment to educate employees on and then stamp out microaggressions and implicit bias. Microaggressions include coded language or references disproportionately applied to people of color. A common example of this is the term "thug," which is disproportionately used against Black people. Microaggressions also include small slights and increased questioning and skepticism about whether individuals of color or women "belong." A well-known Black author who travels extensively (and who may have more frequent flyer miles than our own Richard Lehr) has reported that when she lines up to board a plane with her top-level medallion status, she is regularly questioned if she heard the call correctly. Calling the lone minority in a work group the "token" is another example of a microaggression. Even if the minority in question laughs at or even initiates this joke, this sort of language normalizes a mentality that the minority employee is not there because of his/her qualifications and also that other minorities "need not apply" because the quota has been filled. Employers need to acknowledge that minorities and women experience these microaggressions repeatedly and cumulatively throughout their lifetimes, and to seek to provide a workplace that is a relief from that constant needling.
11. Review with leaders—from shift leaders up—the goals of diversity, outreach, conduct, and truly providing equal opportunity, especially for opportunities that aren't subject to formal application or review, like cross-training, mentorship, overtime, and flexible scheduling to pursue outside education. Make everyone aware of and responsible for meeting these goals.

We look forward to working with you to address these issues constructively at this important time in our nation's history.



Employee Freedom of Expression

Recent headlines featured employer issues with employee free speech rights at work:

- “Facebook Fires Employee in Black Lives Matter Dispute.”
- “Taco Bell Says Employees Can Wear Black Lives Matter Masks After Worker Was Fired for Wearing One.”
- “Publix Forbids Employees from Wearing Black Lives Matter Masks At Work.”
- “Starbucks Relents On ‘Black Lives Matter’ [Making BLM T-Shirts Available to Employees]”

What are an employer’s rights and practical approaches to handle employee social/political expression?

The issue is more complicated for employers whose employees deal with the public. Will some customers be offended at employee expression? If employees are permitted to wear Black Lives Matter buttons, caps or shirts, what about an employee who wants to wear All Lives Matter clothing or buttons? What are an employer’s rights to consider what employees post on social media? The following is a review of employer rights and options to handle employee expression:

1. Private employers may prohibit or permit clothing/buttons which express a social or political message. There is less latitude for employers to prohibit communication of union support through clothing or buttons, depending on the industry.
2. Consider the potential costs of confrontation based on all the circumstances and context. As the headlines above demonstrate, some businesses became the subject of protests and negative media coverage when they chose to aggressively address message clothing that employees, community members, and the public at large felt strongly about. Additionally, some

employees may wear this clothing as a “test” of the employer’s sensitivity or, yes, to get a reaction. In those cases, dialogue, a non-reaction or under-reaction can be a win.

3. Employers may permit some expression but not all. For example, an employer may prohibit employees from wearing clothing showing the confederate flag but permit Black Lives Matter or “I Can’t Breathe” clothing.
4. Employers have the right to consider what employees post on social media, even if the employer’s social media policy may be limited. What employees say and do away from work may matter to the employer. What is the best way to handle such posts? For example, a recent headline involved a high school senior who was recruited to play football at Cornell University. Cornell withdrew the scholarship after a video was posted on social media where the player used a racial slur. The workplace equivalent is the right of the employer to terminate, or not. Some employers may decide to consider the social media post a “teachable moment.” The options are up to the employer. We find more employers have a zero-tolerance approach to employees who post or otherwise use slurs – there is no gray area.

The Employment Aspects of PPP Loan Forgiveness

The Paycheck Protection Program (PPP) provided key financial assistance to many small and mid-sized businesses throughout the U.S. intending to encourage those businesses to maintain employees on their payroll. Eligible businesses could receive loans from the Small Business Administration in an amount equal to up to two and a half months of their average 2019 payroll expenses. Although the loan was offered at an attractive rate with deferred payments, the most attractive aspect of a PPP loan was that amounts used for mortgage payments, rent, utilities and payroll expenses during the Covered Period would be forgiven. Much as the initial PPP loan application process was a moving target, due in



large part to the need to distribute the money as quickly as possible, the forgiveness process has been an evolving paradigm of direction from the SBA and the IRS. The initial forgiveness guidance was not issued until after many PPP recipients were well into the then eight-week Covered Period for forgiveness and revised guidance was issued while this article was being drafted.

This article will highlight some aspects of the forgiveness provisions of the PPP including how employment decisions can impact the eligible amount of forgiveness. The article is not intended to address any specific factual situation and you are encouraged to contact your lending institution, accountant and/or competent legal counsel for further direction regarding a particular circumstance.

What is the maximum amount that can be forgiven?

The entire amount of a PPP loan is subject to forgiveness if the proceeds were used for Payroll Costs, a Covered Mortgage Obligation, a Covered Rent Obligation and/or a Covered Utility Payment during the Covered Period.

What is the Covered Period?

The Covered Period is the eight (8) week OR twenty-four (24) week period that commences on the date that the individual loan was funded. Initially, the Covered Period was limited to an 8-week period but the PPP Flexibility Act extended the Covered Period to 24 weeks. For loans funded prior to June 5, 2020, the loan recipient can elect either period. However, loans funded after June 5, 2020, must use a 24-week covered period. The PPP Flexibility Act extended the period so that more recipients, including recipients that had thus far been unable to completely return to full operation due to the COVID-19 health crisis, could exhaust their PPP loan proceeds in a manner that would make them eligible to be forgiven and return employees to their payrolls as they reopen. Note that there is also an Alternative Payroll Covered Period that can be elected for payroll expenses only by employers whose payroll period is biweekly or more frequent.

What are qualifying Payroll Costs?

Payroll costs are the same payroll expenditures that were used when the PPP recipient calculated the amount of

loan for which the recipient was eligible. The subsequent guidance has offered some additional clarification but the following expenditures will qualify: (1) salary, wages, commissions or similar compensation; (2) cash tip or equivalent (including an employer's ability to subsidize tipped employees who are not receiving tips); (3) paid leave other than that for which a tax credit is taken under the FFCRA; (4) severance payments; (5) group health benefits; (6) employee retirement benefits; (7) state and local payroll taxes; and (8) housing stipends. Excluded from qualifying payroll costs are compensation that is greater than \$100,000 annually, IRS taxes, and compensation paid to employees outside the U.S. Further, note that the PPP Flexibility Act placed additional caps on the amount of compensation for which owners, including employee-owners of C and S corporations, are eligible for forgiveness. Although the rules are somewhat complex and vary by business structure, at a basic level, forgiveness based on compensation to owner-employees is limited to approximately 20.83% of the owner-employee's 2019 income or \$20,833.00, whichever amount is less. An employer who intends to seek forgiveness for amounts (including benefit amounts) greater than \$20,833.00 paid to any individual employee, should seek guidance beforehand.

Is there a requirement that a certain percentage of PPP proceeds be spent on Payroll costs for forgiveness purposes?

At least 60% of the forgiven PPP loan proceeds must be spent on payroll costs. If an entity spends a greater percentage of the proceeds on the other qualifying expenses, the amount eligible for forgiveness will be reduced pro rata. Note that the PPP Flexibility Act decreased the required payroll costs percentage from 75% to 60% in an effort to facilitate greater forgiveness eligibility without substantially undermining the goal of sustaining payroll.

What are the employment factors that will reduce the amount of forgiveness for which a PPP loan recipient is eligible?

There are two primary employment factors that will reduce the amount of eligible forgiveness. First, the loan recipient cannot reduce the number of full-time equivalent



employees (FTEE) when comparing the average number of FTEE from either February 15, 2019 – June 30, 2019 or January 1, 2020 – February 29, 2020 to December 31, 2020 (“FTEE Reduction”). Second, the employer cannot reduce the cash compensation paid to an individual employee by more than 25%. (“Compensation Reduction”). Either the FTEE Reduction or the Compensation Reduction will result in a proportional reduction of the available forgiveness amount.

What exceptions apply to the employment factors that will reduce the amount of available loan forgiveness?

In any instance where the FTEE Reduction or the Compensation Reduction is eliminated prior to December 31, 2020, the reduction(s) will not operate to reduce the amount of available forgiveness. In other words, as long as the employer has restored its number of FTEEs to the prior levels and restored an individual employee’s compensation to at least 75% of prior compensation, these reductions are inapplicable. Note that the Compensation Reduction only applies to employees who were employed during the comparison periods, not newly hired employees, and does not apply to employees with annualized pay in excess of \$100,000 for any 2019 pay period. Likewise, the following categories of employees are not included as part of the FTEE analysis: (1) employees who rejected a written offer of rehire and could not be replaced; (2) employees fired for cause; (3) employees who voluntarily resigned; and (4) employees who voluntarily requested and received a reduction of hours. Finally, there is an additional “catch-all” exception for business that are able to document that they were unable to return to their prior level of business due to sanitation, social distancing or safety requirements issued by a government entity. Documentation is key to establishing that these exceptions apply. Additionally, the SBA indicated in recent guidance that an employer must report an employee who refuses to return to the employer’s state unemployment compensation office within 30 days of the employee’s refusal in order to be eligible for this exception.

How will PPP loan recipients apply for forgiveness?

Borrowers will apply for PPP loan forgiveness using Form 3508 or Form 3508EZ. Form 3508EZ is a simplified version of Form 3508, with significantly fewer schedules and worksheets. The borrower can apply for forgiveness at any point during the Covered Period after it has expended the PPP funds for which it seeks forgiveness or up to ten (10) months after the end of the Covered Period. The lending institutions will make the initial determination whether loan amounts are eligible for forgiveness and are required to inform the SBA of that determination within sixty (60) days of receiving the application for forgiveness. The SBA then has ninety (90) days to review the decision and reimburse the lending institution for the amounts forgiven. Thereafter, the lending institution is responsible for notifying the borrower what amounts were forgiven and, if the total principal amount of the PPP loan was not forgiven, when the borrower’s initial payment is due. It is important that PPP loan recipients document and retain proof of each PPP loan expenditure. Expanding the Covered Period from eight (8) to twenty-four (24) weeks makes it significantly more likely that the forgiveness process will bleed into the following calendar year, and many employers’ fiscal years. There are multiple unanswered tax implications for which guidance is likely forthcoming.

Conclusion

PPP loan forgiveness continues to be a moving target. However, there are a number of strategies that PPP recipient employers can employ to ensure maximization of the available forgiveness. Employers should work with their lender, accountant and competent counsel to map out PPP compliant strategies to ensure that forgiveness is maximized.

No Surprise: SCOTUS Rules Title VII Includes LGBTQ

In our [August 2019 ELB](#), we predicted that the United States Supreme Court would rule that sex discrimination under Title VII includes protection for members of the LGBTQ community. So ruled the Court on June 15 in the case of *Bostock v. Clayton County Georgia*.



As Justice Gorsuch wrote for the majority in a 6-3 decision, “[i]t is impossible to discriminate against a person for being gay or transgender without discriminating against that individual based on sex.”

Surely, when Congress when passed the Civil Rights Act in 1964, it did not consider LGBTQ rights covered by “sex” as a protected class. Several times since, Congress has considered and failed to pass legislation adding LGBTQ as protected classes. Thus, in dissent, Justice Alito stated that the majority’s decision means that “courts should update old statutes so that they better reflect the current values of society.” That responsibility belongs to Congress, not the courts, according to Justice Alito.

Sexual harassment based on LGBTQ status has long been recognized as a form of sex discrimination under Title VII. If an employee of one race is discriminated against because of a relationship with another of a different race, that has long been considered race discrimination. Thus, the same reasoning applies to the application of sex discrimination as it relates to LGBTQ. Employer policies addressing equal employment and harassment should add sexual orientation, gender identity and gender expression to the employer’s list of protected classes.

COVID-19 Return to Work Fallout: Unionization, Wage/Hour and Litigation

As our economy continues to reopen, employers in multiple sectors face several potential risks:

1. In healthcare, social services and other sectors where employees worked during the shutdown, employees may question whether their pay reflects their value. This may contribute to unionization efforts.
2. In all sectors, employers who are not vigilant in establishing and enforcing COVID safety expectations from employees and visitors may end up with OSHA complaints and, again,

possible issues which contribute to an interest in unions.

3. Those who received “heroes’ pay” may not only believe they have been underpaid but may also conclude that ending the heroes pay violates wage and hour law (it does not). This may result in more wage and hour issues or complaints.
4. How are employees selected to return to work and when? This raises potential discrimination issues. In essence, it’s a return from a layoff—how will that be done in a consistent manner?
5. If employees are called back and work reduced hours, how will the employer determine which employees should work the reduced hours? Again, this has potential discrimination implications.
6. Employees may seek to use Emergency Family and Medical Leave during the summer. Once the employee exhausts EFML, the employer is not required to accommodate the continued absence. If the employer needs to fill the position, the employer may notify the employee that the position will be filled. If and when the employee is ready to return to work, the employer will evaluate its staffing needs at that time.
7. Employment-related COVID lawsuits have been filed throughout the country. Examples of the claims include:
 - a. Requiring employees to take unpaid time off after the employer received Paycheck Protection Plan funds.
 - b. Alleged wage and hour violations for failure to pay employees for the time spend sanitizing their uniforms before and at the end of their shift.
 - c. Termination after employee stated that he needed time off to seek a medical



diagnosis whether he should quarantine at home.

- d. Wrongful termination/retaliation of a restaurant employee who refused to work without wearing a mask.
- e. Whistleblower complaint after an employee was terminated for reporting her employer's non-compliance with state COVID workplace requirements.
- f. Disability discrimination for termination allegedly due to COVID and related medical issues.

With federal unemployment benefits ending as of July 31, individuals who are not called back to work may believe the reason was discriminatory or otherwise illegal. Furthermore, some who have worked from home during the shutdown may prefer to continue doing so. Evaluate if there are COVID or ADA implications if an employee resists returning to the workplace. Although a job may be performed from home, the employer has the right to decide whether that should continue.

OSHA Issues Guidance on Reopening

On June 18th, the Occupational Safety and Health Administration (OSHA) issued guidance to assist employers in planning for the reopening of their workplaces. OSHA recommends a three-phase reopening based on local conditions:

In Phase 1, employers should consider making telework available where feasible. For employees returning to the workplace, consider limiting the number of people in the workplace to allow strict social distancing and make accommodations for workers at higher risk of severe illness. Non-essential travel should be limited.

In Phase 2, continue to allow telework where possible, but non-essential travel can resume. Limitations on the number of people can be eased but continue social distancing,

In Phase 3, employers can resume unrestricted staffing of worksites.

The guidelines emphasize advance planning in the following areas:

- **Hazard assessment:** identifying sources of possible exposure to infection;
- **Hygiene:** including practices for hand hygiene, respiratory etiquette and cleaning and disinfection;
- **Social distancing:** maximizing distance between people, both co-employees and customers (including limiting occupancy, demarcating floors, posting signage);
- **Identification and isolation of sick employees:** self-monitoring for symptoms, testing and temperature checks; establishing a protocol for managing sick employees;
- **Return to work after illness or exposure:** follow CDC guidance for returning to work;
- **Controls:** engineering controls (such as physical barriers, ventilation), administrative controls (such as staggered shifts, limited occupancy), appropriate and personal protective equipment;
- **Workplace flexibilities:** telework, sick leave;
- **Training:** including site specific safety measures, possible sources of exposure, symptoms of infection, benefits of wearing face coverings, proper use of PPE;
- **Anti-retaliation:** employees understand their right to raise safety concerns.

The OSHA guidance is [available here](#).



COVID-19 Changes at the EEOC

This article was prepared by JW Furman, EEO Consultant Investigator, Mediator and Arbitrator for the law firm of Lehr Middlebrooks Vreeland & Thompson, P.C. Prior to working with the firm, Ms. Furman was a Mediator and Investigator for 17 years with the Birmingham District Office of the U.S. Equal Employment Opportunity Commission (EEOC). Ms. Furman has also served as an Arbitrator and Hearing Officer in labor and employment matters. Ms. Furman can be reached at 205.323.9275.

The Equal Employment Opportunity Commission (EEOC), like almost everyone else, is doing some things differently since COVID-19 arrived, from office procedures to charge processing to even what is allowed under the laws it enforces.

Communicating with the Equal Employment Opportunity Commission (EEOC) and responding to charges filed with it have undergone a number of changes in the last few months. Although most companies are now trying to reopen in some form, the EEOC offices remain closed to outside traffic for now. All contact with it, including filing new charges, are either electronic (email or the portal) or by phone. Investigations are relying on documentary evidence and phone interviews which, for most investigations, is no different than pre-pandemic. Fewer mediation conferences are being held and none are in person. Employees tell me they have been advised to expect at least two weeks' notice before the office sites reopen, and they have not heard anything further yet.

In an effort to preserve charging parties' rights, the EEOC temporarily stopped issuing charge closing documents (right to sue letters) on March 21, 2020, unless the charging party specifically requests it. This document gives the charging party the right to file a federal lawsuit within 90 days. As a reason for this action, the agency cited its concern that people with pending charges might believe they had to choose between "jeopardizing their safety and protecting their right" to file a lawsuit during the COVID-19 pandemic. This time limit is statutory, and the agency has no authority to change it. EEOC has made no official announcement of this or any other change in its charge processing procedures but did confirm the above when questioned about it. It has not indicated when it will release the closure documents it has been holding.

EEOC has issued some guidance that could be helpful for those companies recalling employees or hiring new staff. Even though the Centers for Disease Control (CDC) has said that individuals over the age of 65 are at greater risk for severe illness if they contract COVID-19, an employer may not involuntarily exclude an employee from the workplace because of that risk. The Americans with Disabilities Act (ADA) does require reasonable accommodations be explored for disabled individuals who request them and might allow exclusion of an employee with a disability if her/his presence poses a direct threat. The Age Discrimination in Employment Act (ADEA), however, does not require accommodations but does permit employers to favor older workers. Thus, workers over 65 can be offered more flexibility than younger ones but cannot be mandated to follow different rules. There is no requirement that employees who live with or are caregivers to people at higher risk be allowed to telecommute but, if they are allowed to do so, the employer needs to have a policy and apply it consistently. EEOC also stated that telecommuting is not the only way to help older and at-risk workers minimize contact with others – adjusting work schedules, moving workstations to lower traffic areas and providing protective gear are options for consideration.

EEOC has recently clarified that, when employees do return to worksites during a pandemic, employers do not violate the ADA by asking if workers are experiencing symptoms of the virus, measuring their body temperature and/or testing for active COVID-19 infection with an accurate and reliable test. The antibody test (which determines whether the worker has ever been infected) does not meet the ADA's standard for medical examinations and cannot be mandated by covered employers.

While some medical information is now allowed to be collected during a pandemic, employers must protect employee medical data. Under the ADA, all health information must be maintained in a confidential file separate from employee personnel records. Access to these records is strictly need-to-know. Also, there are many privacy laws around the country that may need to be considered when maintaining such records. Employers may not disclose the identity of any employee who tests positive for COVID-19. Without disclosing



identifying information, they should notify other employees with whom that individual has interacted of the potential exposure and encourage them to be tested. If an employee requests an alternative method of screening because of a medical condition or religious belief, the employer should treat it as any other request for accommodation under the ADA or Title VII.

As employees come back together in the workplace, employers should be cognizant of discrimination or harassment related to COVID-19. Workers of Asian (particularly Chinese) descent and older workers have been identified by EEOC as potential targets. Employers should watch for signs of harassment of these groups and take immediate corrective action.

EEOC has been releasing guidance regularly for maintaining compliance with laws as the workplace evolves. As we receive that guidance and information on EEOC's processes, we will let you know.

Wage and Hour Tips: Overtime Update

This article was prepared by Lyndel L. Erwin, Wage and Hour Consultant for the law firm of Lehr Middlebrooks Vreeland & Thompson, P.C. Prior to working with the firm, Mr. Erwin was the Area Director for Alabama and Mississippi for the U. S. Department of Labor, Wage and Hour Division, and worked for 36 years with the Wage and Hour Division on enforcement issues concerning the Fair Labor Standards Act, Service Contract Act, Davis Bacon Act, Family and Medical Leave Act and Walsh-Healey Act. Mr. Erwin can be reached at 205.323.9272.

On March 12, 2019, the Department of Labor announced proposed changes to the requirements for management and professional exemptions. After the proposal was issued and a period allowed for comments the revised regulation became effective January 1, 2020.

Below are listed the major changes.

1. The minimum salary level for the exemptions is increased from \$455 per week to \$679 per week (the equivalent of \$35,308 annually). This is approximately mid-way between the current requirement of \$455 per week and the

approximately \$900 per week that was included in the proposed 2016 regulations.

2. The minimum salary level for the "highly compensated employees" is increased from \$100,000 to \$147,414 per year.
3. The Wage and Hour Division states they intend to review the salary level requirements on a periodic basis and make changes to ensure the salary stays current.
4. The revised regulation also allows employers to use nondiscretionary bonuses and incentive payments (including commissions) that are paid annually or more frequently to satisfy up to 10 percent of the minimum salary requirements. Thus, the proposal allows an employer to pay the employee a weekly salary of \$611 and use the employee's commissions or nondiscretionary (guaranteed) bonuses to meet the minimum requirements. If you choose to pay less than the full \$679 per week, you may determine the shortfall and make the catch-up payment at the end of each year. If an employee leaves your employment during middle of a year you must ensure that he/she has earned at least \$679 per week for every week during the period they worked otherwise you could lose the exemption and thus be required to pay the employee retroactive overtime for all hours worked during that period.
5. There are special salary levels proposed for the motion picture industry and for U. S. territories that differ from the \$679 per week.
6. There is no change relating to "blue collar" workers such as police officers, firefighters, paramedics, nurses, and laborers. Also, there is no change for non-management employees in maintenance, construction, and similar occupations.
7. There are no proposed changes to the "job duties" tests for any of the exemptions.



In view of these changes, I recommend that you analyze your pay structure regarding “exempt” employees to determine if you need to make any changes in order to comply with the new regulations. I am sure that you have been very busy dealing with all of the changes related to COVID-19. However, it is important that you continue to review all of your pay practices in order to limit your liabilities regarding the proper payment of overtime.

The Wage and Hour Division has resumed the process of issuing formal opinion letters that deal with specific subjects. This procedure was discontinued during the previous administration even though it has been used for over fifty years. Since they reinstated this practice in 2018, they have issued almost 50 such letters. You can find copies of the letters issued during the 21st century on the Wage Hour [website](#).

If I can be of assistance regarding these changes in the overtime regulations or with other Fair Labor Standards Act matters, do not hesitate to give me a call.

**LEHR MIDDLEBROOKS
VREELAND & THOMPSON, P.C.**

Richard I. Lehr	205.323.9260 rllehr@lehrmiddlebrooks.com
David J. Middlebrooks	205.323.9262 dmiddlebrooks@lehrmiddlebrooks.com
Albert L. Vreeland, II	205.323.9266 avreeland@lehrmiddlebrooks.com
Michael L. Thompson	205.323.9278 mthompson@lehrmiddlebrooks.com
Whitney R. Brown	205.323.9274 wbrown@lehrmiddlebrooks.com
Lance W. Parmer	205.323.9279 lparmer@lehrmiddlebrooks.com
Lyndel L. Erwin (Wage and Hour and Government Contracts Consultant)	205.323.9272 lerwin@lehrmiddlebrooks.com
Jerome C. Rose (EEO Consultant)	205.323.9267 jrose@lehrmiddlebrooks.com
JW Furman (Investigator, Mediator & Arbitrator)	205.323.9275 jfurman@lehrmiddlebrooks.com

THE ALABAMA STATE BAR REQUIRES
THE FOLLOWING DISCLOSURE:
"No representation is made that the quality of the
legal services to be performed is greater than the quality of
legal services performed by other lawyers."