



Political Law Alert

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Solicitable Class for Federal Corporate PACs Affected by Change in Federal Labor Rules

Effective January 1, 2020, the earnings threshold for an employee to qualify as an exempt executive, administrative or professional employee under the Fair Labor Standards Act (FLSA) is rising to \$684 per week (or \$35,568 per year) pursuant to an amendment to the regulations. The threshold, set by the Department of Labor, has been \$455 (or \$23,660 per year) since 2004, despite an attempted rule change in 2016.

This change impacts which employees are eligible to be solicited (and from whom payroll deductions may be collected) for a corporation's PAC. Under the Federal Election Campaign Act (FECA) a corporation and its connected federal PAC are permitted to solicit the corporation's — as well as its affiliate's — stockholders, executive or administrative personnel, and immediate family members for contributions to the connected PAC, and are also allowed to facilitate such contributions. "Executive or administrative personnel" are defined to include employees who are paid on a salaried (not hourly) basis and who have policymaking, managerial, professional or supervisory responsibilities. In determining which employees have those requisite responsibilities, FEC regulations provide that the FLSA and regulations issued pursuant to it may serve as a guideline. In particular, those employees who are exempt from the FLSA's minimum wage/maximum hours regulations, commonly referred to as "exempt employees," are eligible to be solicited under FECA. In order to be defined as an exempt employee under FLSA, an employee must meet a two-part threshold consisting of a salary test and a duties test.

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