

## Bi-Weekly Pay Update – One Step Closer !!

By [Alicia J. Samolis](#) and [Michael A. Gamboli](#)

A few weeks ago we alerted you to the fact that although the somewhat infamous bi-weekly pay law was set to go into effect on January 1, 2014, neither the required application nor the governing regulations had been finalized by the Rhode Island Department of Labor and Training (“DLT”).

We are glad to report that the DLT regulations have now been finalized. The only significant change to the proposed regulations is that instead of having to recertify every two (2) years, employers now only need to do so every four (4) years and will be considered to be authorized to pay employees less than weekly “indefinitely” unless the DLT specifically provides notification to the contrary. This is a minor improvement, but at least somewhat “protects” qualifying employers from forgetting to recertify. The regulations are largely otherwise unchanged and continue to have some confusing provisions. For example, under the regulations it would appear that employers with payroll exceeding 200% of the minimum wage do not have to show good cause in their application and only have to submit a surety bond for one, not two, week’s payroll of affected employees. Given the fact that the statute says otherwise, these differences between being a large and small (less than 200% of minimum wage) employer are likely just oversights by the drafters of the regulations.

Bottom line is that the DLT still needs to put the application on the website, employers still need to fill out the application, the application must be filed with the DLT and the employer must receive “written approval from the Department” and then provide at least fourteen (14) calendar days’ notice to affected employees, all before moving to the new pay period. So hurry up and wait . . .

Final Word: We are anxious to see if the application asks how often the applicant currently pays employees, which will present an interesting question for those employers who currently pay non-exempt employees on a bi-weekly basis and would like to use the application to, in effect, bring themselves into compliance.

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