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**SENATE PASSES BILL THAT WOULD EXEMPT STOCK
OPTION GAINS FROM OVERTIME CALCULATIONS**

The publication of an earlier letter from the Department of Labor (DOL)⁽¹⁾ raised concerns about companies' ability to continue to grant broad-based stock options to non-exempt employees if gains from those options would have to be included in overtime calculations. Several organizations and companies worked with legislators to submit new legislation that would amend the Fair Labor Standards Act (FLSA) to eliminate this potential barrier.⁽²⁾ On April 12, a bipartisan bill backed by the DOL, was passed by the Senate and now moves to the House of Representatives.⁽³⁾

The bill, titled "Worker Economic Opportunity Act" (the Act), would amend the FLSA to exclude the gains from stock options, stock appreciation rights (SARs) and employee stock purchase plans (ESPPs) from overtime calculations if (a) the terms and conditions of the program were communicated to employees when they were hired or when they received the grant, (b) any options and SAR would have a minimum six month vesting period and a purchase price of at least 85% of the stock's fair market value on the date of grant, (c) participation is voluntary, and (d) awards cannot be dependent on future performance of any individual.

Companies would be able to grant awards or determine the size of an award based on previously established performance of a group, or may grant awards discretionarily based on past performance. The language of the bill is clearly meant to characterize these awards as discretionary and not as part of expected individual performance.

The bill, as passed by the Senate, will be effective 90 days after the enactment of the Act and contains a safe harbor that would hold harmless companies with existing grants and allow them to continue to grant non-complying awards, e.g., with vesting periods shorter than six months, for up to one year after the effective date of the legislation if the company would need shareholder approval to change their program.

This legislation has moved very quickly so far and will be welcomed by the business community. The House is expected to vote on its version in the near future.

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General questions may be addressed to Beverly Aisenbrey in our New York office at (212) 986-6330. Specific questions should be referred to counsel. Copies of this letter and other published materials are available on our web site, www.fwcook.com.

⁽¹⁾ See our letter of January 4, 2000

⁽²⁾ See our letter of March 14, 2000

⁽³⁾ The bills are S.2323, introduced by Senators Mitch McConnell (R-KY) and Christopher Dodd (D-CT) and H.R. 4182 introduced by Representative Duke Cunningham (R-CA)