

Overtime Rule Blocked by Federal Court

Nov 23 2016

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Practice Area: Labor and Employment & School Law & Government Law

Yesterday, a federal District Court for the Eastern District of Texas issued a Preliminary Injunction blocking the Department of Labor's (DOL's) new white collar overtime regulations, which were to go into effect on December 1, 2016. The lawsuit had been brought by 21 states (including Wisconsin) and numerous business organizations. The regulations, which increased the salary threshold for exempt status to \$47,476 annually, will be prohibited from going into effect nationwide—at least for now.

The Court held that Congress intended the executive, administrative, and professional exemption to be based on the duties performed by the employee, and that the new salary threshold effectively supplanted the duties test, thus making salary the determinative factor for being able to claim the exemption. As such, the Court held that the DOL had exceeded its authority in this rulemaking and issued its Preliminary Injunction.

What Is the Long-Term Fate of the Law?

The injunction is "preliminary," meaning that further proceedings will occur. The Court will further analyze the matter and determine whether the injunction should be permanent. The injunction is not the end of the litigation, and the actual lawsuit will proceed for a final judicial decision, including any further appeals.

For now, employers will not be required to increase salary levels to \$47,476 for exempt employees, or reclassify employees paid less than that threshold as nonexempt. However, we expect that the DOL will appeal the injunction and ask for a stay of the injunction, which would result in the rules being implemented pending the appeal. So while this injunction provides temporary relief from the obligation to increase wages or reclassify workers, the question is not settled.

Looking ahead, a Republican-led Congress is much more likely to undercut the DOL regulations with legislation now that there is no longer the threat of a presidential veto. The incoming Trump administration could also put an end to the DOL's efforts at defending the regulations. Even further out, assuming the new overtime regulations eventually go into effect, the administration may work to roll back some of the changes. In light of these possibilities, it is not known how far the DOL will go in attempting to defend the regulations.

What Does This Mean For Employers?

This development has created a good deal of uncertainty for employers going forward. Employers may have already taken the steps to comply with the new salary requirements, including reclassifying positions or granting raises. Other employers may have recently reclassified employees whose *duties* did not historically meet the exempt standards, and those changes should remain in place. Employers will need to look at whether their changes should have been in place all along, or if they were specific to the new salary requirement. Further, employers will need to decide if rolling back already announced or implemented measures, especially salary increases, is the best course of action in light of employee morale and other concerns.

The appropriate response to the overtime changes being placed on hold will vary from employer to employer. There is value in discussing with counsel how the injunction impacts your plans now and moving forward.

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