

Proposed Department of Labor Overtime Rule Appears Destined for Shelving

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After a November injunction delayed the implementation of the Department of Labor's new rule for exempt employee classification, an even more serious setback was handed down last week when a Texas federal District Court declared the rule invalid.

The ruling was a victory for the business association plaintiffs who challenged the Department's plan to raise the salary level that certain white-collar employees must earn before they are exempt from the Fair Labor Standards Act's ("FLSA") overtime pay requirements. Previously, white-collar employees working in an executive, administrative or professional capacity and earning an annual salary of at least \$23,660 (\$455/week) were exempt from the FLSA and therefore not entitled to additional compensation for hours worked over 40 per week. The Department's proposed rule would have significantly raised the salary threshold to \$47,476 annually (\$913/week), forcing employers to either raise salaries to this level or pay overtime pay to the previously exempt group.

The decision to invalidate the Department's rule underscores the white-collar overtime exemption as being primarily concerned with the job duties that an executive, administrative or professional employee performs and not simply how much they make. To this end, the court first analyzed the language of the FLSA itself, which provides "any employee employed in a bona fide executive, administrative, or professional capacity . . . as such terms are defined and delimited from time to time by regulations of the Secretary" shall be exempt from minimum wage and overtime requirements. 29 U.S.C. § 213(a)(1). Given the plain meaning of the words executive, administrative and professional – all of which relate to a person's performance, conduct or function – the court said it was clear Congress defined the white-collar exemption with regard to duties and unambiguously intended for employees doing "bona fide executive, administrative, or professional capacity" duties to be exempt from overtime pay.

The court held that a rule categorically excluding many white-collar employees from the overtime exemption based on salary level alone – regardless of whether they are actually performing in an executive, administrative or professional capacity – does not comply with Congress' intent and is therefore invalid. The court noted that the Department previously and permissibly used the minimum salary threshold to "screen out" and identify obviously nonexempt employees (*i.e.*, general hourly employees); however, establishing a \$47,476 threshold makes overtime eligibility status predominantly dependent on the minimum salary level. The error in the rule's focus was found by the court to result in it being unlawful.

The ruling gives employers some clarity on an otherwise frustrating issue and allows them to revert to their previous classification of executive, administrative and professional employees earning at least \$23,660 annually. While a "take back" in wages would be unlikely, the opportunity to classify lower wage individuals as exempt is again available. Looking ahead, it remains unclear how the Department of Labor under President Trump will respond to the court's decision, but many believe at least some increase in the \$23,660 salary threshold can be expected, especially since the Department has already taken steps to promulgate a new rule. Regardless of any successful attempt by the Department to increase this salary level in the future, employers should be certain that each position classified as executive, administrative or professional exempt satisfies the "job duties" component of the white-collar exemption and that employees in these positions are actually working in such a capacity.

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