

Publications

Federal Judge Blocks Overtime Rules Set for December 1, 2016

November 23, 2016 – Alerts

Labor & Employment Alert

By Jeffrey D. Polsky and Melissa Shinto

On November 22, 2016, Judge Mazzant of the U.S. District Court for the Eastern District of Texas issued a nationwide injunction against the Department of Labor (DOL) blocking its Final Overtime Rule, which was set to go into effect on December 1, 2016. The Final Rule would have more than doubled the Fair Labor Standards Act (FLSA) salary test for executive, administrative and professional employees from \$455 per week to \$913 per week. White-collar employees earning below the \$913 threshold would have been entitled to overtime. The DOL rules also established a mechanism for the threshold to adjust automatically every three years starting in 2020.

Looking at the plain language of the FLSA, the Court found that the statutory "white-collar exemptions" apply to employees performing actual executive, administrative and professional duties. Thus, Congress intended the exemption to depend on an employee's duties rather than their salary. The Court held that the DOL exceeded its delegated authority and "ignored Congress's intent by raising the minimum salary level such that it supplants the duties test."

The Court therefore enjoined the DOL from implementing and enforcing the Final Rule nationwide. For now, the injunction "preserves the status quo while the Court determines the Department of Labor's authority to make the Final Rule as well as the Final Rule's validity." Moving forward, the Final Rule may face an uphill battle as the Court found the states challenging the Final Rule showed a "substantial likelihood of success on the merits."

Takeaways:

Although this is a victory for Nevada and the 21 other states that sought the injunction, it raises difficult questions for employers who had planned to roll out changes in line with the Final Rule on December 1, 2016, or who had already done so. Since this is most certainly not the last word on the subject, employers who had plans to implement those changes must decide whether to scrap their plans, proceed with the changes or take a wait-and-see approach.

- Employers that have already implemented changes in anticipation of the new rules taking effect need to consider from a human resources standpoint the impact of reversing those actions. Taking away promised salary increases will inevitably lead to dissatisfied employees. Employers need to weigh the costs of that unhappiness against the cost of the salary increases.
- Employers that have not implemented changes are better able to take a wait-and-see approach. The injunction could well be modified or even lifted. If that happens, there is no way to know how long employers will have to comply with any revised standards.
- Employers must still be mindful of the duties test of the "white-collar exemption," which has not been altered. Given that many employers struggle to comply with the duties test, we expect that reclassification class actions filed by private lawyers will continue unabated.
- In addition, employers still need to comply with state specific requirements for overtime exemptions (which may include salary test thresholds of greater than \$455 per week).
- Whatever steps employers take, it will be important to inform employees to the extent that changes previously taken or announced may be altered.

ASSOCIATED PEOPLE



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