FLSA Salary Changes Halted For Now (Updated 12 01 16)

Insights
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UPDATED 12 01 16: As expected, the U.S. Labor Department has filed a notice to appeal the Court's November 22, 2016 order.

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On November 22, Texas federal District Judge Amos Mazzant preliminarily enjoined the U.S. Labor Department from "implementing or enforcing" the salary-related changes in the federal Fair Labor Standards Act's "white collar" exemptions that were supposed to take effect on December 1. His decision was made in response to an emergency motion by the 21 states that had filed suit seeking to invalidate the Labor Department's actions.

Last-Minute Ruling
According to Judge Mazzant, the Labor Department's new regulations are inconsistent with what Congress intended for these exemptions. He also determined that, while Congress gave the Labor Department the power to define them, the agency had exceeded that authority in over-emphasizing the salary-basis test.

The judge felt that an emergency injunction was necessary in order to ensure that he could reach a meaningful final decision on the merits of the case.

A similar Texas lawsuit brought by a number of business groups and employer advocates has been consolidated with the states' case. Judge Mazzant ruled in the states' lawsuit only, but he extended his order nationwide and did not say that the injunction was limited to the states alone.

It appears that, absent a subsequent, contrary decision by Judge Mazzant or a reversal by a higher court between now and December 1, for now the Labor Department's new regulations will *not* go into effect as scheduled, at least with respect to:

◊ Increasing the minimum salary threshold from $455 per week to $913 per week,

◊ The so-called 10% "credit", and

◊ The tri-annual salary "update".

It appears that the increase in the highly-compensated employee exemption's *total annual compensation* threshold from $100,000 to $134,004 might not have been blocked. The order provides that "the Department's Final Rule described at 81 Fed. Reg. 32,391 is hereby enjoined", but then states, "Specifically, [USDOL is] enjoined from implementing and enforcing the following regulations as amended by 81 Fed. Reg. 32,391", followed by a list of affected sections that does not include the highly-compensated variety of the exemptions found at 29 C.F.R. § 541.601.

A Measured Response Is *Critical*

Employers must be mindful that:

◊ This is not the judge's final ruling, and he has ruled only in the case brought by the 21 states;

◊ The current Labor Department can be expected to appeal as quickly, as often, and to as many forums as it possibly can;

◊ If the employer-favorable decision is reversed, it is at least possible that a court will later rule that the original December 1 implementation date was indeed effective (as at least one court did in connection with the revised 2015 "companionship"-exemption regulations); and

◊ Changing course now could result in one's having to change *back* in the future.

Alternatives — *Not* Certainty

The fact is that the future is clouded by so many potential scenarios that few if any indisputably "right" or "wrong" courses of action exist. Moreover, a one-size-fits-all approach is unwise; what an employer should do must take into account its own, unique circumstances and concerns.

If you have already altered your compensation plans or revised your employees' exemption status, there might well be adverse employee-relations implications if you reverse course now. Furthermore, reversing action already taken could implicate notice requirements, wage-payment laws, and even the contract-law principles (or other common-law doctrines) of other jurisdictions. One alternative would be to take no further action until a final decision is reached in the courts, or to see what Congress and/or the incoming administration do (if anything). And in this respect, keep in mind the belief among many (including some in Congress) that the $455-a-week figure should be increased. Even many who oppose the current changes see the question as being by how much and how quickly the threshold should increase.

If you had been waiting until December 1 to announce and implement changes and so decide to stand-pat for the moment, remember that Tuesday's ruling might not be the last word, and that a later reversal of the preliminary injunction might restore the December 1 effective date. If you had already communicated an intention to take particular steps that have not yet been implemented, then, again, you must weigh the advantages and disadvantages (including the employee-relations impact), and potential legal ramifications of electing to follow-through versus announcing that you will hold-off for the moment.

The Bottom Line

Whatever you do, tailored, well-considered communications to the workforce will of course be indispensable. For example, if the situation calls for it, one component might be a message to the effect that management will monitor developments and will decide what to do after the legal landscape has cleared.

But no such communications can be fully effective until you first decide how to respond to what is at the moment a somewhat-chaotic legal environment. And in making that decision, care and reflection are essential.

Related People

Caroline J. Brown
Of Counsel
404.240.4281
Email