



Federal Judge Deals Another Blow To USDOL's "Overtime Rule" (Updated 09 07 17)

Insights

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UPDATED 09 07 17: The 5th Circuit has granted USDOL's unopposed motion to voluntarily dismiss its appeal of the preliminary injunction. USDOL's actions in dismissing its appeal likely signal an intention to forgo appealing last week's summary judgment order that was favorable to our clients. Though more good news, employers should continue to maintain the status quo until there is more clarity.

UPDATED 09 05 17: USDOL has submitted an unopposed motion for voluntary dismissal of the interlocutory appeal of the preliminary injunction.

A federal judge in Texas struck down the controversial Obama-era change to the federal Fair Labor Standards Act that was intended to substantially raise the minimum salary threshold required for employees to qualify for the "white collar" exemptions. This signifies another setback for the so-called "overtime rule". While the decision is favorable to employers, the fate of the Final Rule remains to be seen.

Some Context

In May 2016, the U.S. Department of Labor unveiled the details of its final revised regulations defining the "white collar" exemptions from the federal Fair Labor Standards Act's (FLSA's) overtime and minimum-wage requirements. The two changes with the broadest impact: the minimum salary threshold increasing to \$913 per week; and the scheduled updating every three years (meaning that it will likely increase with each update). The changes were slated to take effect December 1, 2016. On November 22, 2016, however, District Court Judge Amos Mazzant granted a preliminary injunction blocking these changes.

Though USDOL quickly filed an appeal, current USDOL leadership has said it would not advocate for the *specific* salary level set forth in the Final Rule and subsequently began seeking public comment regarding various "white collar" exemption issues, including the minimum salary threshold. The 5th Circuit U.S. Court of Appeals is scheduled to hear oral arguments on October 3 regarding the preliminary injunction order, though there was a motion this week to hold the case in abeyance "pending further discussions by the parties in an attempt to narrow the dispute and potentially

pending further discussions by the parties in an attempt to narrow the dispute and potentially eliminate the need for this appeal." In the meantime, Judge Mazzant has moved forward and issued a summary judgment ruling at the district court level.

District Court: USDOL Exceeded Its Authority

Judge Mazzant's decision largely follows the same rationale he used to grant the preliminary injunction and block the rule from taking effect in November. He noted that Congress delegated to the USDOL the role of determining the essential qualities of who would qualify for this exemption. Judge Mazzant attempts to clarify that he has not made any assessment regarding USDOL's authority to implement a compensation test, but that "the Department does not have the authority to use a salary-level test that will effectively eliminate the duties test." In his view, the new rule's doubling the previous minimum salary level effectively wipes away the duties test for approximately 4.2 million workers, and in turn, overemphasizes the minimum salary level's role. As he stated, "this is not what Congress intended." Judge Mazzant concluded simply: "The Department has exceeded its authority and gone too far with the Final Rule." He also summarily noted that the automatic updating mechanism that intended to adjust the minimum salary level every three years was similarly unlawful, and struck that portion down as well.

The Bottom Line

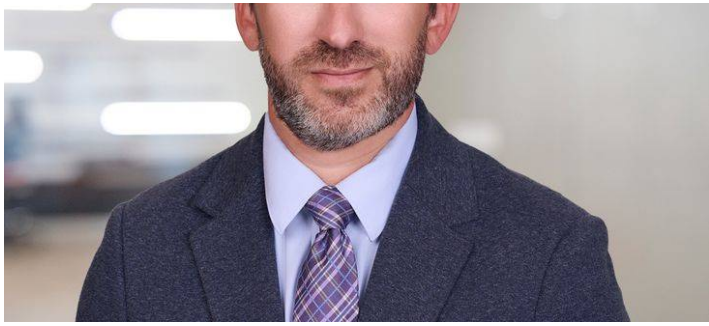
There are currently three streams of activity with respect to the overtime rule.

- USDOL is seeking additional public comment. While it is likely that USDOL will propose a more moderate salary threshold, this process could take several twists and turns over many months.
- The 5th Circuit was beginning to move forward with respect to USDOL's appeal of the preliminary injunction order. In light of the lower court's new decision, where the appeals court and the parties will stand with respect to the current appeal, on essentially the same issues, is unclear.
- The summary judgment order will not sit well with worker advocacy groups and unions. In a separate Order issued yesterday, Judge Mazzant denied Texas AFL-CIO's motion to intervene. Such groups will almost certainly consider what courses of action might allow them to continue the fight.

Employers have reason to hope for a favorable outcome, but should continue to maintain the status quo while these moving parts sort themselves out.

Related People





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