



USDOL Appeals Ruling Against Its "Overtime Rule" (Updated 10 31 17)

Insights

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By: The Editor

UPDATED 10 31 17: The U.S. Department of Labor has also announced its intention to "file a motion with the 5th Circuit [U.S. Court of Appeals] to hold the appeal in abeyance while the Department of Labor undertakes further rulemaking to determine what the salary level should be."

If the court grants such a motion, then it will be impossible to predict when, if ever, there will be an appellate ruling on the issues raised with respect to the "overtime rule".

The U.S. Department of Labor has today filed a notice (link below) that it is appealing September's summary-judgment ruling against the compensation-related changes the agency sought to make in regulations defining the federal Fair Labor Standards Act's "white collar" exemptions.

The notice contains no indication of what USDOL's motivations are or of what its substantive arguments might be. However, the agency probably wants to keep the case alive pending its ongoing, independent review of and eventual action to be taken in conjunction with the public's recent responses to USDOL's Request for Information regarding these regulations. And judging from USDOL's positions expressed in the litigation previously, it seems likely that the agency:

- ◇ Will *not* defend the \$913-a-week figure chosen by President Obama's USDOL; but
- ◇ *Will* argue that a salary test is legally permissible under the white-collar exemptions.

Employers should not expect an appellate decision anytime soon. After preliminary steps have been completed, the schedule for briefs and oral arguments alone might well encompass several months. At that point, how long it will be before the appellate court rules is anyone's guess.

[USDOL Notice of Appeal 10 30 2017](#)

