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BLOCKED! COURT PRELIMINARILY HALTS OVERTIME RULES WITH LAST-MINUTE RULING

Rules Will Not Take Effect On December 1; Future Thereafter Uncertain

Insights
Nov 22, 2016

In a dramatic last-minute development, a federal judge in Texas today blocked the U.S. Department of Labor's (USDOL's) overtime rule from taking effect on December 1, handing an eleventh-hour victory to employers across the country. Agreeing with arguments posed by concerned states and business groups, the judge issued a preliminary injunction preventing the rules from being implemented on a nationwide basis.

The fate of the overtime rules is now uncertain. The Trump administration will take over the USDOL in less than two months' time, and the incoming administration has repeatedly indicated that it wants to eliminate unnecessary regulations hampering the business community. Unless an appeals court reverses course in the next several weeks and breathes new life into the rules, it is quite possible that the rules will be further delayed, completely overhauled, or altogether scrapped once President Trump takes office.

Background: Proposed Rules Would Have Brought Massive Changes And Upheaval

On May 18, 2016, the USDOL unveiled a [package of revised regulations](#) altering the compensation requirements relating to which employees may be treated as exempt from the federal Fair Labor Standards Act's (FLSA's) overtime and minimum-wage requirements under the so-called "white collar" exemptions. The two changes with the broadest impact: the minimum salary threshold you could pay in order

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Richard R. Meneghello

Chief Content Officer

503.205.8044

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to characterize an employee as exempt would increase from \$455 to \$913 per week, which annualizes to \$47,476 (up from \$23,660 per year); and this amount would be “updated” every three years (meaning that it will likely increase with each update) with the first update scheduled for January 1, 2020.

Once announced, the USDOL informed employers that the new rules would take effect on December 1, 2016. By this date, employers would have been forced to make sometimes difficult decisions on how to compensate the estimated 4.2 million workers who are currently classified as exempt under the so-called “white collar” exemptions but earn less than the new threshold.

Almost immediately, an outcry sprung from the business community, especially those advocating on behalf of small businesses. By doubling the existing salary threshold, the USDOL’s actions would likely reduce the proportion of exempt workers sharply while increasing the compensation of many who will remain exempt, rather than engaging in the fundamentally definitional process called for under the FLSA. As many pointed out, manipulating exemption requirements to “give employees a raise” has never been an authorized or legitimate pursuit.

Moreover, publishing what amounts to an automatic “update” to the minimum salary threshold is something that has never before happened in the more-than-75-year history of the FLSA exemptions. This departs from the prior USDOL practice of engaging in what should instead ultimately be a qualitative evaluation that would take into account a variety of non-numerical considerations.

Businesses And States Turn To Court For Relief

In response to these announced changes, [a group of 21 states and several business associations filed lawsuits](#) in the Eastern District of Texas seeking a court order that would block the rules from going into effect. The cases were all consolidated into one action, to be heard by District Court Judge Amos Mazzant (an Obama appointee).

The challengers argued that the USDOL did not properly carry out its responsibility under the FLSA to define these exemptions, failing to take into account the duties of white-collar workers as the best indicator for whether threshold increases were needed. The plaintiffs also argued that the

automatic indexing mechanism which would ratchet up the salary levels every three years was improper because it would ignore current economic conditions or the effect on public and private resources.

Court Blocks Overtime Rules

On November 22, 2016, District Court Judge Mazzant agreed with the state challengers and blocked final implementation of the rule mere days before the December 1 effective date. In his ruling, he stated that it was improper for the USDOL to adopt a salary test that categorically excludes a substantial number of workers who meet the exemptions' duties-related requirements. Although he acknowledged that Congress delegated definitional power to the agency with respect to these exemptions, he concluded that the USDOL overstepped its authority.

He concluded that the rule change equated to a de facto "salary-only test," because it would have had the effect of causing some 4.2 million workers who are today classified as exempt to become non-exempt, despite the fact they would have exactly the same job duties on December 1. He said that Congress never authorized the USDOL to classify white collar workers based on salary alone, and the USDOL ignored Congress's intent by attempting to raise the minimum salary as it did. "If Congress intended the salary requirement to supplant the duties test," he said, "then Congress, and not the USDOL, should make that change."

The judge recognized that, for 75 years, the salary levels that served as part of the USDOL's overtime exemption test acted as a floor and not a ceiling. He said during last week's oral argument the new rule's proposed salary jump was "a much more drastic change." During that argument, in fact, he pointed out that the proposed substantial increase in the salary threshold could lead to inconsistent treatment of workers who each fulfill white collar duties but are paid differently. A convenience store manager who clearly acts as an executive and who is paid a salary annualizing to only \$47,000 a year, for example, would be treated differently than a similarly situated manager who is paid a salary equating to \$47,500 a year.

He rejected the USDOL argument that the change was not "drastic." At oral argument, counsel for the government characterized the jump as a simple "course correction" that was long overdue. She pointed out that the current salary

level was below the poverty level for a family of four, proving that it is inappropriate for white collar workers. But even if it was considered to be a drastic increase, she said, it was within the USDOL's authority to set such a level because the agency's process in arriving at this figure was carried out by the book and should be afforded deference by the court. Judge Mazzant obviously disagreed.

How Does Trump's Election Impact The Future Of The Rules?

President Trump will be inaugurated on January 20, 2017 – less than two months from today. It is possible that Judge Mazzant might be swayed by USDOL arguments in the coming weeks, or that an appeals court could step into reverse Judge Mazzant's ruling before President Trump takes office. As the judge said in his opinion, it could be that this ruling "only delay[s] the regulation's implementation."

Assuming that the injunction survives the remainder of President Obama's term, it is difficult to predict what President Trump will do with the rules once in the White House. Perhaps President Trump will direct his USDOL to commence a new rulemaking process, subject to notice and comment, with the goals of setting lower thresholds for the salary requirement and eliminating the three-year update, among other changes. How long and what form such a process would take, and what could or would be done in the meantime, are currently unpredictable.

At the same time, [a series of measures have been introduced in Congress](#) hoping to prevent or stall the rules changes. While one of the proposed legislative changes would scrap the increases altogether, another proposed change would delay implementation for a period of time to provide a longer period of preparation. Still, another would push the date that the full increase would take effect to 2019, introducing more forgiving gradual increases on an annual basis for the next three years.

The fate of these measures is similarly uncertain at present. Even if any of these measures were fast-tracked, approved by Congress, and signed by President Obama before he leaves office, it is unclear whether they would ever take effect given the nature of the current litigation.

What Should Employers Do Now?

Some employers might find themselves in a difficult spot. If

you have already made alterations to your compensation plans or to your employees' exemption status, it might be unpopular to reverse course now. Although you may have the legal right to revert to the status quo depending on your circumstances, you might consider waiting until a final decision is reached in court, Congress, and the White House before doing anything further.

If you had been waiting until December 1 to implement the changes, you have the option of putting any alterations on ice and awaiting a final determination on the fate of the rules. If you do so, you might consider communicating to your workforce that the expected changes are going to be delayed given today's court ruling, and let them know that you will continue to monitor the situation and make adjustments when and if appropriate.

We will track these developments on a daily basis, and provide updates through our Legal Alerts and [blog posts](#). If you have any questions, please contact your Fisher Phillips attorney, or any member of our [Wage & Hour Practice Group](#).

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