

## NEXT NAIL IN THE COFFIN: OVERTIME RULE STRUCK DOWN BY FEDERAL JUDGE

Insights  
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A federal judge in Texas today 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 nail in the coffin for the so-called “overtime rule,” which was originally blocked in late November 2016, and has since faced a very uncertain future given the subsequent change in White House leadership.

While today’s decision is favorable to employers, whether it is the “final” nail for the minimum salary threshold originally proposed (\$913 per week) remains to be seen. In any event, it is likely the U.S. Department of Labor will propose another version of the rule in the coming months, so employers should be prepared for more changes.

### BRIEF HISTORY OF OVERTIME RULE

In May 2016, the U.S. Department of Labor (USDOL) unveiled a [package of regulations](#) intending to alter 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 “white collar” exemptions. The two changes with the broadest impact: the minimum salary threshold you must pay in order to characterize an employee, otherwise meeting the duties requirements, 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),

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with the first update scheduled for January 1, 2020. The changes were slated to take effect December 1, 2016.

On November 22, 2016, however, District Court Judge Amos Mazzant (an Obama appointee) [granted a nationwide injunction to block the rules](#). 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 when it issued the rule, agreeing with arguments brought forth by a series of state attorneys general and business advocacy groups.

The government appealed the ruling, but after the appeal was filed, there was a significant shift in the federal government: Donald Trump was inaugurated and [Alexander Acosta was installed as head of the USDOL](#). In [a June court filing](#), the new USDOL leadership continued to argue that it has the authority to set a salary threshold, but indicated that it had decided not to advocate for the specific salary level (\$913 per week) established by the overtime rule and "intends to undertake further rulemaking to determine what the salary level should be." The USDOL then sought public comments about the future of the rule [in July](#). Although the agency did not say explicitly that it wanted to ultimately propose and adopt a lower-than-\$913-per-workweek threshold, there is wide belief that a more moderate salary level is on the horizon.

Meanwhile, the original litigation brought about in attempt to strike down the rule for good continued in a federal court in the Eastern District of Texas. Although many had turned their attention away from Judge Mazzant and were instead focused on the 5th Circuit Court of Appeals, the USDOL, and the White House, today's development brought the eyes of the nation's employers squarely back to the original case.

## **JUDGE: "USDOL EXCEEDED ITS AUTHORITY"**

Judge Mazzant's [18-page decision](#) largely mimics the same rationale he used to grant the 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, but as the

judge said, “the Department does not have the authority to use a salary-level test that will effectively eliminate the duties test.” He concluded that the new salary-level test did not give effect to Congress’s intent because, by more than doubling the previous minimum salary level, it would “essentially make an employee’s duties, functions, or tasks irrelevant if the employee’s salary falls below the new minimum salary level.” In his view, under the circumstances the new rule would have made overtime status depend predominantly on the minimum salary level, effectively wiping away the duties test. Judge Mazzant concluded simply: “The Department has exceeded its authority and gone too far with the Final Rule.”

He also 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.

## **WHAT’S NEXT FOR EMPLOYERS?**

There are currently three concurrent streams of activity ongoing with respect to the overtime rule. First, the USDOL has already asked for public input on the minimum salary test. This process could take several twists and turns over many months. However, it is quite likely that the USDOL will emerge from this process with a more moderate minimum salary test in place.

Second, the 5th Circuit Court of Appeals is scheduled to hear oral arguments on the appeal from Judge Mazzant’s November injunction in the coming weeks. Coincidentally, earlier today the government asked the appeals court to cancel the October 3 oral argument and hold the case in abeyance “pending further discussions by the parties in an attempt to narrow the dispute and potentially eliminate the need for this appeal.” Where the parties and the appeals court will stand with respect to that pending motion is unclear in light of today’s lower court decision.

[Ed. note: On Tuesday, September 5, the USDOL asked the 5th Circuit Court of Appeals to dismiss the appeal altogether given that the underlying injunction is now moot. On Thursday, September 7, the court granted the USDOL’s unopposed motion to voluntarily dismiss its appeal of the preliminary injunction. The agency’s actions in dismissing

the case likely means that it will not appeal last week's ruling striking down the underlying rule.]

Finally, today's decision will not sit well with worker advocacy groups and unions. We can anticipate that those in favor of the overtime rule will ask to step in to the case and take the place of the USDOL, which has announced that it will no longer support the original rule as proposed. If the court system permits these groups to take over the case, they will almost certainly appeal today's decision to the 5th Circuit Court of Appeals.

While these moving parts sort themselves out, employers should continue to maintain the status quo with respect to their actions in response to the overtime rule.

For day-to-day developments, we will track the fate of the overtime rule by providing updates on our [Wage and Hour Law blog](#). For breaking news, we will issue timely Legal Alerts; you can be sure to receive them by [subscribing to our legal alert service](#).

If you have any questions, please contact your Fisher Phillips attorney, or any member of our [Wage & Hour Practice Group](#).

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