

CLIENT ALERT: Update – Federal Court Blocks New Overtime Regulations – By Daniel Field and Tracy Boland

Employers preparing to comply with new overtime rules received an unexpected reprieve from new federal regulations that were scheduled to take effect on December 1, 2016. In a decision issued on Tuesday afternoon (11/22/2016), the U.S. District Court of the Eastern District of Texas issued a nationwide, emergency injunction preventing the U.S. Department of Labor from implementing the overtime rules anywhere in the United States. The new regulations were scheduled to become effective in a few days and would have increased the minimum annual salary from \$23,660 to \$47,476 required for employees to meet the white collar exemptions to the Fair Labor Standards Act's (FLSA) overtime and minimum wage requirements.

As a consequence of the court injunction, employers are not required to meet the new salary minimums, and may continue to follow existing regulations in determining whether an employee qualifies as overtime exempt.

Although the Court's order is preliminary, there is reason to believe that the new, higher salary level requirements may never become mandatory. The Department of Labor may appeal the Court's decision; however, with the Trump administration set to take control of the agency on January 20, 2017, it is uncertain whether the Department of Labor will elect to do so.

The Court's reasoning also suggests that it is likely to issue a permanent order ending the new exemption rule; the Court found that in implementing the higher salary level test, the Department of Labor, "exceeds its delegated authority and ignores Congress's intent by raising the minimum salary level such that it supplants the duties test ..." As to the portion of the unprecedented new rule requiring automatic increases to the salary threshold every three years, the Court held that because the overtime rule "is unlawful, the Court concludes the Department [of Labor] also lacks the authority to implement the automatic updating mechanism." In short, the Court struck down the entire scheme related to the higher salaries and future indexing of increases.

Employers who were preparing to re-classify employees or increase salaries in December based on the new rules can follow two paths. First, they may choose not to implement any increases for the time being and to continue with their current policies and job classifications (as long as they comply with the current white collar exemption rules, including mandatory minimum weekly salary of \$455 per week). Alternatively, employers may choose to move forward with planned salary increases to avoid workplace morale issues, especially if they have already informed staff about their raises or notified employees of their re-classification to overtime-eligible status. In other words, nothing in the Court's actions *prevents* an employer from increasing salaries or otherwise properly designating employees as overtime-eligible.

Notably, the Court's decision does not affect the general "duties tests" used to determine whether an employee is properly classified as exempt; employers still must demonstrate that exempt employees' actual job duties meet either the executive, administrative, professional or outside sales exemption tests.

Because of the rapid developments in this case, employers are advised to monitor the situation closely; we will notify you promptly of any further changes or developments in this case. Please contact your MBJ lawyer with any questions.

The case is *State of Nevada v. United States Department of Labor, et al*, 4:16-CV-00731 (E.D. Tex., 2016).

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