

Texas Federal Court Blocks New DOL Overtime Exemption Rule from Taking Effect on December 1

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In a stunning turn of events, a federal court in **Texas** issued a nationwide injunction late yesterday blocking the **U.S. Department of Labor's** new rule on overtime exemptions from taking effect. The rule, which was slated for implementation on December 1, 2016, would have more than doubled the salary threshold that "white collar" workers need to receive in order to qualify as exempt from the overtime requirements under the **Fair Labor Standards Act (FLSA)**. In light of the injunction, there is thus no longer a requirement to boost the salaries of white collar exempt workers to at least \$47,476 annually beginning December 1 in order to avoid having to pay them overtime.

Background of the New Rule

Under current Department of Labor (DOL) regulations, most white collar employees – executives (supervisors), administrative employees, and professionals – are exempt from the FLSA overtime rules and need not be paid overtime for hours worked over 40 in a workweek if they satisfy two conditions. First, they must perform "exempt" duties as defined by the DOL regulations. Second, they must be paid a guaranteed salary of at least \$455 per week, or about \$23,660 annually.

The new rule, which was proposed in 2015 and finally announced in May 2016, significantly raised the salary level necessary to qualify for a white collar exemption to \$913 per week, or about \$47,476 annually. The rule was scheduled to take effect on December 1 of this year. Although labor organizations and liberal groups praised the new rule, the business community expressed serious concerns about its costs and impact.

The Lawsuits Challenging the Rule

In September of this year, 21 states and dozens of business organizations filed suit in federal court in Texas to block implementation of the new rule. In the order issued late yesterday in the case involving the states, the federal court generally agreed with the argument made by the states and business organizations that the DOL had overstepped its authority in boosting the salary threshold, and enjoined the rule from taking effect.

What Happens Next and How Should Employers Respond?

The injunction blocking the new salary threshold rule is likely to remain in effect for the remainder of the Obama administration. After that, it is unknown what a Trump administration may do. Some commentators believe that a Trump DOL will either roll back the new rule entirely, or reduce the proposed salary threshold to an amount lower than \$913 per week/\$47,476 annually. However, to date there has been no clear guidance from the incoming administration as to what its plans are.

This dramatic ruling from the Texas federal court may put some employers in a difficult position. For employers who have already made changes in employee salaries or exempt status to comply with the new rule prior to December 1, it may be difficult to reverse course without damaging employee morale. For that reason, some employers may choose to keep the changes in place and see what happens over the coming months with the new Presidential administration. Other employers may find that the immediate cost savings outweigh any concerns over employee morale, and opt to reverse the changes right away.

For those employers who have not yet made changes, it may make sense to put those changes on hold while the court system and the new Trump administration sort this out. Regardless, employers are encouraged to consult with legal counsel to discuss their options and strategies for responding to these recent developments. Varnum's Labor & Employment Practice Team stands ready to assist employers with any questions or concerns they may have about these overtime exemption issues.

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