

Texas Federal Court Blocks Overtime Rule; Employers Off the Hook on December 1 Changes (For Now)

Article By:

Scott T. Allen

Yesterday, a federal judge in **Texas** issued a temporary nationwide [injunction](#) preventing the **U.S. Department of Labor's (DOL's)** overtime rule from taking effect on December 1. We discussed both the [lawsuit](#) and the [final rule](#) previously, and also provided a [Q&A](#) about these changes.

Employers across the country have been scrambling to ensure that workers currently covered by the executive, administrative, or professional exemptions (also known as the “white collar” exemptions) to the Fair Labor Standards Act (FLSA) would remain exempt. The final rule issued by DOL back in May would have raised the salary threshold – the minimum amount that employees must earn to be exempt from overtime pay under the white collar exemptions – from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476 per year) beginning December 1.

DOL estimated that more than four million workers would become entitled to overtime as a result of the new rule, and that employers would convert the vast majority of workers currently earning less than \$913 per week to hourly status (rather than increase their salaries).

Twenty-one states and over 50 business organizations challenged the overtime rule in federal court. They argued that DOL exceeded its authority under the FLSA by focusing on the salary earned by executive, administrative, and professional employees instead of focusing on their job duties.

The judge agreed with the plaintiffs and determined that “Congress did not intend salary to categorically exclude an employee with [executive, administrative, or professional] duties from the exemption.” He concluded that the states were able to show a likelihood of success in their challenge to the rule as well as irreparable harm if it went into effect, while the DOL failed to show it would be harmed if the rule were delayed.

It is critically important that employers keep in mind that the injunction issued by the court is only temporary. The validity of DOL's final rule will continue to be litigated with the same judge, and will be subject to appeals. Most importantly for employers, nothing changes regarding the duties tests that must be satisfied for the white collar exemptions to the FLSA. So, if an employer has workers misclassified as exempt based on the duties they perform, the injunction will not protect them, and that employer should remedy the situation now.

While employers are off the hook for now, much uncertainty remains. The Trump administration and its new Secretary of Labor (whoever that will be) cannot unilaterally rescind a final regulation like this one. However, they can decide not to continue defending it in the courts. It would be prudent to have plans in place to comply with the overtime rule should it ultimately take effect.

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