

DOL's Overtime Rule Blocked by Texas Judge

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A federal judge recently granted an emergency preliminary injunction filed by the State of Nevada, twenty other states, and several businesses, blocking the new Fair Labor Standards Act Overtime Final Rule. The Rule was supposed to go into effect on December 1, 2016. It would have doubled the salary level threshold from \$23,660 to \$47,476 at which more than four million employees would have to be paid in order to be exempt from overtime.

In *State of Nevada v. United States Department of Labor*, the plaintiffs filed suit against the Department of Labor and its Wage and Hour Division challenging the Overtime Final Rule. The plaintiffs argued that the Department of Labor exceeded its authority by significantly raising the salary threshold and providing for automatic adjustments to the threshold every three years. Additionally, the plaintiffs alleged that the significant cost of complying with the Rule would cause irreparable injury because it would cost states millions of dollars and impact governmental programs and services.

In the opinion and order dated November 22, 2016, Judge Amos L. Mazzant II of the U.S. District Court for the Eastern District of Texas stated:

To be exempt from overtime, the regulations require an employee to (1) have [executive, administrative or professional] duties; (2) be paid on a salary basis; and (3) meet a minimum salary level....The salary level was purposefully set low to “screen[] out the obviously nonexempt employees making an analysis of duties in such cases unnecessary.”...But this significant increase to the salary level creates essentially a de facto salary-only test.

Judge Mazzant applied the injunction nationwide, stating “A nationwide injunction protects both employees and employers from being subject to different [executive, administrative and professional] exemptions based on location.”

The Department of Labor stated that it “strongly disagreed” with the decision and was “considering all of our legal options.”

Employers should note that the Overtime Rule will not take effect as planned on December 1, 2016. Still, while employers have most likely spent considerable time adjusting employee schedules and job duties in anticipation of the new Rule, they should not assume that the Overtime Rule will be permanently barred. Employers are encouraged to monitor the situation and be prepared to implement salary increases to employees to preserve their exempt status should the injunction/ban

be lifted.

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National Law Review, Volumess VI, Number 333

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