

Uncertainty Over Status of FLSA White Collar Amendments Continues: DOL Appeals Injunction to Fifth Circuit

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As most employers know by now, on November 22, 2016, a federal court in Texas issued a preliminary injunction that, at least temporarily, halted the implementation of the U.S. Department of Labor's (DOL) amendments to the Fair Labor Standards Act's (FLSA) white-collar exemptions. The amendments were to have gone into effect on December 1, 2016, and would have more than doubled the salary requirements for exempt executive, administrative, and professional employees. Much to the business community's chagrin, this saga continues.

On December 1, 2016, the DOL filed an appeal over the district court's ruling with the Fifth Circuit Court of Appeals in New Orleans. The DOL also has requested expedited review of the injunction in an attempt to resolve the issue before Inauguration Day on January 20, 2017.

If successful, the DOL's appeal could reinstate implementation of the FLSA amendments – requiring employers to respond quickly. However, nothing is certain. Employers are struggling with how to proceed. Predictions have proven difficult. Furthermore, it is possible that over the next few weeks or months we could see additional actions taken by the DOL, Congress, or the incoming administration.

Given such uncertainty, many employers are taking a “wait and see” approach; maintaining current classifications and pay practices, while preparing for the potential implementation of the DOL's substantial increases to the salary-basis test. Ongoing discussions with labor and employment counsel also may be prudent to ensure prompt compliance once a final determination is made.

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