

ALERT

Federal Court Preliminarily Enjoins DOL's Final Overtime Rule

November 23, 2016

UPDATE (12/2/16): The U.S. Department of Labor (DOL) and department officials filed a notice of appeal on December 1, 2016 with the U.S. Court of Appeals for the Fifth Circuit in New Orleans appealing the nationwide preliminary injunction entered by the Eastern District of Texas judge blocking DOL's final overtime rule. An appeal brief has not yet been filed; we will provide updates on further developments.

WHAT: The U.S. District Court for the Eastern District of Texas has issued a preliminary injunction enjoining implementation of DOL's Final Rule modifying the executive, administrative, and professional exemptions to the Fair Labor Standards Act's (FLSA) minimum wage and overtime pay requirements (Final Rule). According to the Court, the preliminary injunction is effective nationwide and preserves the status quo. In granting the preliminary injunction, the Court found that DOL exceeded its delegated authority and ignored Congress's intent by raising the minimum salary threshold such that it supplanted the executive, administrative, or professional duties test and created essentially a de-facto salary only test. The Court further concluded that DOL lacked the authority to implement the automatic updating mechanism that adjusted the minimum salary level every three years beginning on January 1, 2020.

WHEN: The Court issued the preliminary injunction last night, November 22, 2016. DOL's Final Rule had been set to take effect next Thursday, December 1, 2016.

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BACKGROUND: On September 20, 2016, 21 states filed a lawsuit to enjoin the implementation of the Final Rule arguing that DOL's regulations would force states and businesses to substantially increase their labor costs and that the agency overstepped its statutory authority to establish a federal minimum salary level for executive, administrative, and professional employees. A similar lawsuit was filed the same day by more than 50 business groups and was ultimately consolidated with the states' lawsuit. For more information on the specifics of DOL's Final Rule see our prior alert [here](#).

WHAT DOES IT MEAN FOR INDUSTRY: DOL's Final Rule raising the salary threshold and setting automatic salary increases every three years will not take effect on December 1 as planned, per the Court's decision to apply the injunction nationwide. At this time, employers need not adjust salaries upward to the Final Rule's \$913 per week (\$47,476 per year) threshold in order to continue to claim exempt status under the FLSA. The salary threshold remains at \$455 per week (\$23,660 per year). For federal service contractors, the injunction means that the scope of coverage under the Service Contract Act should remain unchanged and that any reclassification of personnel based on the impact of these pending FLSA changes is no longer necessary. However, as emphasized in the Court's decision, salary level alone does not determine exempt status. In order for an exemption from FLSA's overtime requirements to apply, an employee's salary and specific job duties must meet the requirements of the regulations. The duties test for executive, administrative, and professional employees concerning the type of work the employee performs – where employers most often run into misclassification issues – remains unchanged by the Court's order. For example, to qualify for the administrative employee exemption, the employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers, and the employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance. In addition, although the Final Rule is preliminary enjoined, litigation on the validity of the Final Rule continues and DOL will likely file for an expedited appeal to stay the decision. Employers should therefore carefully consider how best to proceed with the plans they have put in place to comply with the Final Rule.