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Federal Judge Blocks DOL Overtime Rule Implementation

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In a surprising eleventh-hour decision, a federal district judge in Texas issued a nationwide preliminary injunction yesterday, blocking implementation and enforcement of an overtime rule change recently adopted by the Department of Labor (“DOL”). The new overtime rule more than doubled the minimum salary for white-collar overtime exemptions from \$455/week (\$23,660 annually) to \$913/week (\$47,476 annually) and was slated to take effect on December 1.

Background and Basis for the Decision

In September, 21 states filed a lawsuit challenging the overtime rule. The U.S. Chamber of Commerce and more than 50 business groups filed a similar suit. After the cases were consolidated, the states requested emergency relief to stop the new rule from going into effect. In issuing a preliminary injunction to block the DOL from implementing or enforcing the change, the court held that the DOL exceeded its statutory authority in setting the new statutory minimum.

The court noted that Fair Labor Standards Act (“FLSA”) regulations require employees who are exempt under the white-collar exemptions to (1) have executive, administrative, or professional job duties; (2) be paid on a salary basis; and (3) meet a minimum salary level. The statute sets forth the duties test, and the regulations fill in details. By contrast, the regulations created the salary requirements. The district court concluded that the DOL had exceeded its statutory authority under the FLSA by increasing the regulations’ minimum salary so drastically that it supplanted the duties test.

Historically, the DOL had set the salary test purposefully low to screen out obviously nonexempt employees, but the court determined that the new rule’s significantly increased salary essentially created a de facto salary-only test. The court reasoned that Congress did not intend a salary requirement to categorically exclude an employee with executive, administrative, or professional duties and, as a result, found that the rule was contrary to the statutory text and congressional intent. The court cautioned that it was not addressing the general validity of including a salary test in the regulations but only considered the salary test as amended by the recent rule.

The new rule also increased the minimum salary for the exemption for highly compensated workers from \$100,000 to \$134,000 annually. The district court’s ruling does not address the highly compensated exemption.

Further Developments Possible

As the defendant in the consolidated cases, the DOL could appeal the preliminary injunction to the U.S. Court of Appeals for the Fifth Circuit, which could affirm or vacate the injunction. If the appeal is expedited and the Fifth Circuit vacates the injunction, employers should be

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prepared to comply quickly with the rule. On the other hand, the litigation could be stalled until President-elect Trump takes office.

The Trump administration might choose not to challenge a court decision invalidating the rule, which would mean the last version of the regulations (with the \$455/week salary level last updated in 2004) would remain in effect. President-elect Trump has signaled he may seek to revise this rule, particularly as it applies to small businesses. Any further regulatory changes by the DOL would proceed through the formal rulemaking process. Additionally, Congress may take action to challenge the regulation under the Regulatory Review Act.

What to Do Now...

Employers have been preparing for this change for months, and the court's injunction so close to the rule's effective date creates challenges. Employers have examined the classification of their exempt workers, assessing their job duties against the relevant regulatory tests as well as the rule's new salary minimum. Some have already implemented changes, and others have communicated to their employees that the changes would take effect next week. Some employers have already reclassified workers who did not meet the new minimum as nonexempt, and some of those workers may also have been less clearly exempt under the job duties test.

The answer to the question "What to do now?" is not the same for all employers. In determining the next steps, employers will need to consider whether changes have already been communicated to employees and how quickly the employer can adjust its approach if the injunction is lifted. Employers might choose to implement some changes (such as time tracking for employees who would have been reclassified as nonexempt) even if they do not fully proceed with changes that would have been required by the rule (such as the actual reclassification of employees as nonexempt). Employers with large numbers of employees who satisfied the duties test but fell below the new salary threshold may want to delay increasing salaries (or converting employees to nonexempt) until the fate of the overtime rule becomes clearer, but any such decision must consider what communications have been issued and what promises have been made to those employees. Employers that conducted a broad review of employee classifications and planned to reclassify employees who did not clearly meet an exemption's job duties test have good reason to go forward with the reclassifications as planned. Employers relying solely on the highly compensated exemption for some employees should proceed with increases based on the new minimum of \$134,000 for those individuals.

We will continue to provide updates as developments continue over the next days, weeks, and months.

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