

Federal Court Halts Implementation of New Overtime Final Rule

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Yesterday afternoon, the United States District Court for the Eastern District of Texas issued a nationwide preliminary injunction blocking implementation of the Department of Labor's Final Rule that would have raised the minimum salary level for white-collar exempt employees under the Fair Labor Standards Act ("FLSA") from \$455 per week (\$23,660 annually) to \$913 per week (\$47,476 annually), effective as of December 1, 2016. It should be emphasized that the Court's decision to stay implementation of the Final Rule is not a final decision. Rather, the ruling puts the Final Rule on hold for now until the Court can give full consideration to the arguments raised by the parties to the case. The DOL has indicated that it is considering all available legal options.

The Court's decision was in response to a case that was initially filed by 21 states claiming, among other things, that the DOL's Final Rule violated the 10th Amendment of the U.S. Constitution by "coercing the States to adopt wage policy choices that adversely affect the States' priorities, budgets, and services." The states' case was consolidated by the Court with a separate lawsuit that was filed more recently by the Plano Chamber of Commerce and over 50 other business organizations.

Both groups of plaintiffs had challenged the Final Rule, arguing that it exceeded the DOL's delegated authority from Congress and ignored Congress' intent in creating the duties tests for the white-collar exemptions from overtime under the FLSA by raising the minimum salary level so that it actually supplanted the white-collar duties test. The Court agreed with this argument, concluding that the Final Rule's "significant increase to the salary level" would create "essentially a de facto salary-only test . . ." that would undermine Congress' intent to exclude employee's from overtime based on the duties performed by those employees, not the level of salary earned. Because Congress' intent on this issue was clear, according to the Court, the DOL was not entitled to deference in fashioning regulations that is usually afforded the federal agency responsible for statutory enforcement.

The Court's conclusion that the Final Rule is unlawful made it unnecessary to decide the plaintiffs' other argument – that the Final Rule's provision allowing for automatic updating of the minimum salary every three years was a violation of the notice and comment rule making requirements of the federal Administrative Procedures Act.

With the Court's decision yesterday, the Final Rule raising the minimum salary level for exempt employees will not go into effect on December 1, 2016. Employers will be permitted to continue with their existing pay policies, pending a final decision by the Court. Although the decision is a temporary one, it seems likely, given the Court's unambiguous conclusion that the DOL's Final Rule is unlawful, that a permanent stay of the Final Rule will be forthcoming. A permanent stay would be subject to review on appeal by the Fifth Circuit Court of Appeals and, possibly, the U.S. Supreme Court.

Federal Court Halts Implementation of New Overtime Final Rule (Cont.)

For those employers who have already adjusted employee salaries in anticipation the December 1st deadline, it would be prudent to leave those changes in place, at least for now. There are few obvious upsides in trying to rescind salary adjustments that have already been made. Employers who have yet to implement employee reclassifications or salary adjustments may want to consider delaying any planned changes, pending the outcome of the litigation.