

Court Halts DOL Rule Set To Extend Overtime To Millions on December 1

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by Ryan E. Mick

In an unexpected decision, on Tuesday, November 22nd, the U.S. District Court for the Eastern District of Texas issued a nationwide preliminary injunction against implementation of the Department of Labor's ("DOL's") controversial final Rule expanding overtime eligibility for millions of workers, which was set to take effect on December 1st.

The DOL's new Rule, issued on May 18, 2016, nearly doubled the salary threshold for the so-called "white collar exemptions" from the Fair Labor Standards Act's ("FLSA's") minimum wage and overtime requirements. Under the old Rule, employers satisfied the minimum salary threshold if they paid exempt employees a salary of \$23,660 annually (or \$455/week). The new Rule increased this requirement to \$47,476 annually (or \$913/week). According to the DOL, this new threshold was set based on the salary level at the 40th percentile of earnings for full-time workers in the lowest-wage Census Region (which currently is the South). See DOL Factsheet, Final Rule to Update the Regulations Defining and Delimiting the Exemption for Executive, Administrative, and Professional Employees, available at <https://www.dol.gov/whd/overtime/final2016/overtime-factsheet.htm>.

Since the 1940s, the DOL's regulations have required employers to satisfy both a "salary" and a "duties" test in order to classify employees as exempt executive, administrative, or professional employees. The DOL last updated the minimum salary requirement in 2004. When it issued the new minimum salary requirement in May 2016, the DOL stated that in focusing on the salary component in its new Rule, its intent was to "simplify the identification of overtime-protected employees, thus making the [executive / administrative / professional] exemption easier for employers and workers to understand and apply." See DOL Factsheet, *supra*. The DOL observed that—absent an upward salary adjustment by their employers—the new Rule would expand the right to receive overtime pay to approximately 4.2 million workers currently classified as exempt. See *id.*

Despite this lengthy regulatory history, in deciding to issue a nationwide preliminary injunction, U.S. District Judge Amos Mazzant held that while Congress delegated

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significant authority to the DOL to define exempt duties, it did not authorize the DOL to limit application of the white collar exemptions based on salary level. The District Court noted: “While [Congress’s] explicit delegation would give the [DOL] significant leeway to establish the types of duties that might qualify an employee for the exemption, nothing in the [executive / administrative / professional] exemption indicates that Congress intended the [DOL] to define and delimit with respect to a minimum salary level.” As such, in promulgating the May 2016 final Rule, “the [DOL] exceed[ed] its delegated authority and ignore[d] Congress’s intent by raising the minimum salary level such that it supplants the duties test.”

Although the District Court stated that its decision applies only to the DOL’s May 2016 final Rule – and expressly disclaimed an intent to make a “general statement on the lawfulness of the salary-level test for the [executive / administrative / professional] exemption” – proponents of the DOL’s final Rule likely will continue to argue that the District Court’s decision runs counter to an established understanding of the state of the law and considerable judicial precedent across the country enforcing the DOL’s minimum salary requirement for decades. Indeed, despite the District Court’s attempt to limit its holding, the court’s rationale would appear to have considerably broader implications than an injunction only against the new minimum salary requirement.

Yesterday’s preliminary injunction is a welcome development for employers concerned about the DOL’s abrupt and significant increase in the minimum salary requirement for the white-collar exemptions. It is clear that the new minimum salary requirement will not go into effect for U.S. employers on December 1, 2016, as anticipated. However, employers should not assume that the DOL’s final Rule is dead. The District Court’s order only imposes a preliminary injunction, which the District Court could lift itself after further litigation, although that outcome seems relatively unlikely at present. The DOL also could appeal any final injunction to the United States Court of Appeals for the Fifth Circuit, a possibility that also is uncertain given the imminent change in presidential administrations. Further, future litigation will determine whether the Eastern District of Texas’s rationale could be adopted more broadly to have a more sweeping effect on the longstanding salary basis test.

While the future of the DOL’s new minimum salary requirement is now uncertain, employers should remember that the duties requirements for the FLSA’s white collar exemptions remain intact. Employers should remain diligent in ensuring that only those employees whose primary duties satisfy one or more of the applicable exempt duties tests are treated as exempt from overtime requirements.

Employers also should remain aware of exemption requirements under applicable state law, which are unaffected by developments at the federal level. For example, employers must remember that during the period the injunction is in effect, they still must comply with varying state-level minimum salary requirements that are higher than the existing federal minimum. For example, California requires that white-collar exempt employees be paid a monthly minimum salary of at least twice the state’s minimum wage. California’s minimum wage will increase starting January 1, 2017, with annual increases

thereafter. As of January 1, 2017, the California salary minimum will be \$43,680, lower than the \$47,476 proposed requirement at issue but far above the current federal salary requirement.