

DOL Overtime Regulation Delays

On November 22, 2016, a Texas federal district court granted a nationwide preliminary injunction that temporarily blocks new Department of Labor (“DOL”) overtime regulations from going into effect on December 1 as scheduled. (State of Nevada et al. v. U.S. Department of Labor, Civil Action No. 4:16-cv-00731-ALM). The revised rules apply to certain executive, administrative, and professional employees and increase the standard salary level threshold from \$455 a week, or \$23,660 annually to \$913 per week, or \$47,476 annually, before an employee is exempt from the overtime requirements of the Fair Labor Standards Act. The DOL previously estimated that about 4 million more workers would receive overtime pay under the revised regulations.

The injunction also blocks three other changes under the new regulations. Under the new rules, the income threshold for highly compensated employees increases from \$100,000 to \$134,004 annually. The new rules also allow employers to use commissions and other non-discretionary incentive pay to satisfy up to 10% of the salary level for the standard white collar exemptions. Additionally, the new rules also provide that future automatic updates to the income thresholds occur every three years, beginning on January 1, 2020.

In granting the injunction, the Court held that Congress intended the executive, administrative, and professional exemptions to be based on an employee’s duties — not on an employee’s salary level. The injunction means employers will not have to comply with the new regulations on December 1. The Court’s decision is only a temporary injunction. However, by the time the Court will rule on the merits of the case, new DOL appointees under the Trump administration could rescind or change the revised rules. Likewise, although current DOL officials are likely to appeal the district court’s injunction to the Fifth Circuit Court of Appeals, new DOL appointees after inauguration day on January 20, 2017 are unlikely to continue that appeal.

This injunction, issued so close to the effective date of the new DOL rules, is likely to create uncertainty for employers and employees. Employers who have not yet increased employee compensation or reclassified employees to comply with the new rules might delay any changes until required to do so. Employers who have already acted, might take steps to rescind salary increases. Illinois employers are also required to comply with the Illinois Minimum Wage Law overtime exemption rules.

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