

Business Realities Under the Halted DOL Final Overtime Rule

Labor & Employment Law Update

on November 28, 2016

As we previously reported, last week on 11/22/2016, US District Judge Amos Mazzant blocked the 12/1/2016 implementation of the DOL Final Overtime Rule when he issued a preliminary injunction in favor of the plaintiffs (21 States and over 50 business organizations) in litigation pending in the Eastern District of Texas.

THE FINAL RULE

The Final Rule, announced on 5/23/2016, would increase the minimum salary level for exempt employees from \$455 per week (\$23,660 annually) to \$913 per week (\$47,476 annually) (see our prior article for more information). Notably, there was no change to the Duties Test to determine whether a white collar executive/administrative/professional position actually qualified for the exemption. For months, employers across the country worked toward ensuring compliance with the Final Rule by analyzing job duties, raising salaries, converting exempt employees to non-exempt, reducing benefits, or least preferably, preparing to let employees go.

WHAT'S NEXT?

Judge Mazzant ruled that the DOL exceeded "its delegated authority and ignore [d] Congress' intent by raising the minimum salary level such that it supplants the duties test." In further support of his decision, he also noted that the Supreme Court routinely strikes down "agency interpretations that clearly exceed a permissible interpretation based on the plain language of the statute, particularly if they have a great economic or political significance."

While the preliminary injunction puts the Final Rule on hold, the case moves forward until the court determines whether the DOL had authority to make the Final Rule and whether it is valid. In the meantime, the DOL could issue an amended rule. Alternatively, Congress may choose to act on House Bill 5813 or Senate Bill 3464, which would phase in salary increases starting at \$692 per week (\$35,984 annually) and reach the DOL's salary levels in 2019 or 2020 respectively. Then, there is also the possibility that the next president will take action upon taking office.

WHERE DO WE GO FROM HERE?

Of course, a number of employers have already implemented, or notified employees of, changes as a result of the Final Rule. To the extent that such changes (or announcements) included raising salaries, employers must weigh the adverse impact on employee morale of a salary reduction versus financial burdens of staying the course. Consider strategies when hiring new employees, but do so with caution to avoid drawing equal pay or other discrimination charges. For changes not yet implemented or announced, it would be appropriate to hold off until the issue is resolved.

Because the Duties Test remains unchanged, employers that have not yet analyzed their workforce to ensure current compliance must take a critical look at their operations – just because employees are currently paid \$455/week or more does not mean they are properly exempt.

Experienced employment counsel can assist with auditing current compliance, and assisting with strategies for implementing changes. In any event, stay tuned as we anticipate that overtime reform is likely to occur in light of this injunction and the 2016 election results, and wage and hour litigation is sure to follow.

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