

# IMPORTANT DOL UPDATE: The Final Rule on Doubling White Collar Salaries Is Shot Down By Texas Judge

## Labor & Employment Law Update

By Heather Bailey on September 6, 2017

Previously, we reported to you on the U.S. Department of Labor's ("DOL") Final Rule that raised the minimum salary threshold required to qualify for the Fair Labor Standards Act's ("FLSA") "white-collar" exemptions (executive, professional and administrative classification) from \$455 per week (\$23,660 annually) to \$913 per week (\$47,476 annually) as of December 1, 2016 (see our prior articles: [U.S. DOL Publishes Final Overtime Rule](#) and; [Are you ready for December 1st? The FLSA Salary Changes Are Almost Here](#)).

The Obama administration's goal with this Final Rule, announced on 5/23/2016, was to give approximately 4 million workers the ability to earn overtime pay, instead of getting paid a fixed salary since many employers would not be able to afford to pay their otherwise exempt employees \$47,476 annually. Implementation of this new rule had been temporarily stalled in a federal court in Texas just prior to it going into effect this past December 1<sup>st</sup> (see our prior articles: [Court Enjoins DOL Overtime Rule](#) and; [Business Realities Under the Halted DOL Final Overtime Rule](#)).

However, on August 31, 2017, Judge Amos L. Mazzant of the United States District Court, Eastern District of Texas answered many business owners' prayers by ruling the DOL indeed exceeded its authority by more than doubling the minimum salary threshold for exempting white-collar employees (see the full case [here](#)).

The judge did not say the DOL could not raise the minimum salary at all. Rather, relying heavily on *Chevron, USA, Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984), the judge stated that by more than doubling the current minimum threshold, the DOL effectively eliminated the need for looking to the employees' actual duties and responsibilities—which was the essence of Congress's intent when it created the FLSA white collar exemptions. The judge looked to the plain meaning of what it means to work in an executive, administrative and professional capacity concluding the primary focus was not the salary minimum but instead the actual duties and responsibilities.

**What are the ramifications?** The Department of Justice voluntarily dismissed its appeal of Judge Mazzant's earlier preliminary injunction ruling putting the Final Rule on hold, so it seems unlikely it will appeal this ruling. However, this decision could catapult the Trump administration to issue a new rule providing for a more moderate increase in the minimum salary threshold – one that does not vitiate the primary focus of the “white collar” overtime exemptions: the employees’ actual duties and responsibilities.

**Practice Tips:**

- The good news for now is that employers can continue to follow the previous DOL regulations for white collar exemptions (*i.e.*, duties test and salary test).
- If you did not do so previously, analyze your exempt positions to confirm they meet the duties test and are truly exempt positions. For example, is your manager truly a manager or is she really a lead worker? Is this manager hiring, firing and disciplining two or more employees? Is your payroll clerk clearly just doing data entry or is he exercising independent discretion and judgment? If the position does not meet the duties test, you transitioning the position to make it overtime eligible.
- Ensure management is trained to enforce policies related to overtime pay such as those relating to working time, time clock procedures, meal and rest breaks, working off the clock issues, etc.
- Did you already make changes to your employees’ pay or duties based upon the final rule going into effect on December 1, 2016? While there are ways to change those decisions (*i.e.*, you can change an employee’s pay moving forward for work not yet performed), you need to keep in mind morale issues for employees whose compensation may decrease either by way of a salary reduction or loss of overtime pay. In these situations, it is highly recommended that you work with your counsel on determining the best practices for your business and your workforce.

With the judge’s ruling, many business owners will be able to find some comfort in being able to keep their exempt employees on a reasonable salary without having to break the bank.

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