

Will We See New Federal Overtime Rules in March?

Labor & Employment Law Update

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Last Fall, the Department of Labor (DOL) announced that it intended to issue a Notice of Proposed Rulemaking (NPRM) in March 2019 regarding the salary levels applicable to the executive, administrative and professional exemptions that exclude certain employees from the coverage of the Fair Labor Standards Act's minimum wage and overtime provisions. The DOL has been reviewing the regulations at 29 CFR 541, which implement the exemptions, and is expected to seek public comment on the salary level before issuing a final rule.

Of course, we all recall the most recent final rule on the subject. The Obama administration's final rule, announced on May 23, 2016, would have increased the minimum salary level for exempt employees from \$455 per week (\$23,660 annually) to \$913 per week (\$47,476 annually). This rule was challenged in the latter part of 2016 in the Eastern District of Texas. U.S. District Judge Amos Mazzant blocked the rule's December 1, 2016, implementation when he issued a preliminary injunction in favor of the plaintiffs (21 states and over 50 business organizations). In his ruling, Judge Mazzant noted 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." He also added 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." The appeal of Judge Mazzant's ruling was dismissed in September 2017.

Based on current Secretary of Labor Alexander Acosta's comments that the jump to \$47,476 was excessive, it has been expected that the DOL's NPRM would propose an updated salary level test of somewhere between \$30,000 and \$35,000.

At this time, there is nothing employers need to do. And while it could be months, perhaps even longer, before a new final rule is issued, we expect that the current salary level will be increased. At this rate, though, the salary levels may once again become an issue in the next presidential election. Whatever happens, stay tuned – we will keep an eye on any action by the DOL and will keep you updated!