

Federal Judge Issues Nationwide Injunction Blocking Implementation of New Overtime Pay Rules

On November 22, 2016, a federal judge issued a preliminary injunction enjoining the Department of Labor ("DOL") from implementing and enforcing changes to the white collar exemptions from overtime pay that the DOL announced earlier this year and that were scheduled to go into effect on December 1. Those changes more than doubled the minimum salary threshold for executive, administrative, and professional employees to be exempt from the Fair Labor Standards Act's overtime pay requirements, increasing the amount from \$23,660 annually to \$47,476 annually as of December 1 and automatically increasing the salary threshold every three years.

Twenty-one (21) states filed suit in the U.S. District Court for the Eastern District of Texas this past summer to challenge the regulations, claiming among other things that the DOL's changes to the salary thresholds exceeded the DOL's statutory authority under the FLSA. The executive, administrative, and professional exemptions have long required that exempt employees both be paid on a salaried basis above a certain threshold amount and that their duties be executive, administrative or professional in nature. The states argued that the new salary threshold effectively ignores the "duties test" required by the statute and relies only on a high salary to determine whether an employee is exempt.

Recognizing that the Court would not make a decision on the merits of the case before the changes were scheduled to become effective, the states asked the Court for a preliminary injunction to stop the changes from becoming effective on December 1. In granting the states' Emergency Motion for Preliminary Injunction yesterday, Judge Mazzant held that the states had met their burden to show a likelihood of success on the merits of their challenge because the DOL, by more than doubling the salary threshold, had improperly converted the exemption standard to a salary test and had effectively eliminated the duties requirement:

"With the Final Rule, the Department exceeds its delegated authority and ignores Congress's intent by raising the minimum salary level such that it supplants the duties test. Consequently, the Final Rule [is not entitled to deference] and is unlawful. The Department's role is to carry out Congress's intent. If Congress intended the salary requirement to supplant the duties test, then Congress, and not the Department, should make that change."

Judge Mazzant also held that the DOL had likely exceeded its authority with respect to the automatic updating of the salary threshold for the same reasons.

Although the Court's injunction is only temporary pending the Court's full consideration of the merits of the states' challenges to the new regulations, the litigation process is likely to extend beyond the original December 1 effective date with the injunction in place. As such, employers who have not yet implemented changes to their pay practices to comply with the new regulations may hold off on making those changes pending further orders from the Court or an appeal by the DOL. However, they need to be prepared to make the changes quickly in the event the injunction is removed or reversed. Employers who have already implemented increased salaries or converted exempt employees to non-exempt status ahead of the rule change may be able to reverse those changes. However, they will need to proceed with caution and make sure that any such changes are prospective only and meet any state law requirements as to advance notice of changes in pay. Also, before making any such change, employers are advised to consider the employee morale issues associated with such changes and to consult with their legal counsel.

Please contact any of the Cohen & Grigsby lawyers with whom you work at 412.297.4900 for more information. We will keep you updated on any additional developments. To receive future bulletins and news alerts, please send an e-mail to bulletins@cohenlaw.com.

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