
Federal Court Blocks Department of Labor Regulations that Would Increase Exempt Employee Minimum Salaries

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While employers may welcome the injunction, employers should tread carefully before rolling back announced salary increases. On November 22, 2016, a federal judge in the Eastern District of Texas issued an injunction preventing U.S. Department of Labor (U.S. DOL) overtime regulations, which were scheduled to go into effect on December 1, 2016.

Background

On May 18, 2016, the U.S. DOL adopted a new final rule increasing the minimum salary required for employees to qualify as exempt from overtime requirements under the Fair Labor Standards Act (FLSA). The rule was to become effective December 1, 2016, and would have more than doubled the minimum salary required for the executive, administrative and professional exemptions from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476 per year) and provided a mechanism for automatic increases to such minimum salary level every three years.

As a result of the new rule, many employers with exempt employees earning salaries below the new minimum were preparing to either raise salaries or convert such exempt employees to hourly pay on December 1, 2016.

What Happened?

Enforcement of the new regulations was enjoined by the U.S. District Court for the Eastern District of Texas on November 22, 2016. The court determined that it need not defer to the U.S. DOL's interpretation of the FLSA because the new overtime regulations were contrary to the FLSA text and Congress' intent and the court determined that an injunction was warranted because the 21 state plaintiffs would suffer irreparable harm if the injunction was not granted. Notably, the injunction applies nationwide, not just the 21 states that are plaintiffs in the case.

Locally, Patrick Candoleta, Assistant District Director from the U.S. DOL Office in Guam, acknowledged that the nationwide temporary injunction prevents the final overtime rule from taking effect on December 1, 2016. Mr. Candoleta shared that the U.S. DOL is considering all of its legal options and will keep us updated as the situation develops.

What Should Employers Do?

Now that a federal district court judge has issued a nationwide injunction against the new overtime rules that were to go into effect on December 1, 2016, many employers are asking “what should we do?” Some employers have already prepared to comply with the new regulations and are ready to roll out new payroll practices next month. Do they hold off or press forward?

If employers have not notified employees that their salary is increasing or that they are being reclassified as hourly, employers could elect to comply with the rule despite the injunction, but most employers will likely wait for further developments in this case and any possible changes the incoming Trump administration may apply to the rule in order to maximize flexibility in addressing employee compensation.

If employers have already given employees notice of changes—either increases in salary or reclassification as hourly employees—employers could reverse course and continue with current pay practices. However, employers should weigh the employee relations aspects of taking back announced changes. For example, undoing announced salary increases may be unpopular with employees. In most cases, maintaining exempt salaried status pending further developments for employees who were told they would become hourly employees should be less difficult than abandoning announced increases.

Employers must weigh various business and legal risks in deciding whether to comply with the now enjoined overtime regulations. There is a legal risk that if the regulations are later upheld, they may be enforced retroactively. In that event, employers may be liable for overtime payments to employees who were classified as exempt under the current regulations but who are not exempt under the new regulations. In the event of such a litigation attempting retroactive enforcement of the overtime rule, employers will have difficulty defending against claims if they do not have accurate records of the hours worked by employees. So, an employer that decides to hold off on complying with the new regulations may want to keep accurate records of the hours worked by any employee who is now considered exempt but could be considered non-exempt under the new regulations.

Continue to Monitor the Status of the Rule

The injunction is temporary, and there is no guarantee that the District Court will ultimately conclude that the new rule is invalid, or that a Court of Appeals or the United States Supreme Court will not ultimately overturn any determination that the rule is invalid. It is also not yet clear whether the incoming Trump administration and/or the new Congress will attempt to roll back this rule via new legislation or other rulemaking.

Consequently, an employer that elects not to comply with the new rules as of December 1, 2016, should carefully monitor developments and be prepared to implement the new rule if the injunction is dissolved or an appellate court overturns the District Court’s ruling (and if no other legislative or regulatory action supersedes this rule).

SHRM Guam will keep you posted on any new developments on the status of the overtime rule.