

DOL APPEALS AFTER FEDERAL JUDGE ISSUES INJUNCTION TO BLOCK FLSA CHANGES

Fast-moving developments related to the new Fair Labor Standard Act (FLSA) are taking place as President Obama's administration nears its end.

On November 22, 2016, a federal judge in Sherman, Texas blocked a Labor Department rule that would have expanded overtime protections to millions more US workers as of December 1, 2016. U.S. District Judge Amos Mazzant issued a nationwide preliminary injunction against the rule, saying,

"The Department didn't have authority to automatically update the rule for EAP, or the white collar exemption to the rule requiring time-and-a-half overtime pay."

In response, on December 1, 2016 the U.S. Department of Labor (DOL) filed an appeal with the Fifth U.S. Circuit Court of Appeals in New Orleans, LA to defend the regulations, saying,

"The ruling has the effect of delaying a fair day's pay for a long day's work for millions of hardworking Americans."

The November 22 ruling delays implementation of the DOL's new regulations which would increase the number of employees entitled to overtime pay. The court's injunction calls into question whether these proposed overtime changes will ever go into effect.

The FLSA changes that were blocked include:

- Increasing the annual salary threshold from \$23,660 to \$47,476. This means that employees who earn less than \$47,476 a year (\$913 a week) would need to be classified as nonexempt and, as a result, would

become eligible for overtime pay, even if they are classified as a manager or professional.

- Automatic increases in the salary threshold, every three years. Based on current projections, the salary threshold was expected to increase to more than \$51,000 with the next update on January 1, 2020.

Prior to this preliminary injunction, all employers were required to comply with the changes by Dec. 1, 2016. This will delay the implementation of the new regulations. The result of the pending related court cases and potential changes by the new Trump Administration may lead to further changes to the FLSA regulations.

Because of the injunction, employers are not required to make the changes to overtime pay for employees until further notice. This puts employers in a difficult position. Many have already implemented changes to their compensation practices and payroll systems, and have communicated exemption status and pay changes to employees in order to comply with the pending regulations. It may be difficult to reverse these changes without causing disruption in the workplace.

Other employers have prepared for the December 1, 2016 deadline, but have not yet implemented or communicated the related changes. In this case, RGP recommends that employers should review the regulations to see if any of the changes should be implemented immediately, such as exemption changes related to the duties test (vs. the salary threshold).

Over the coming months, RGP will continue to monitor the related court activity and information coming from the DOL to assess future implementation considerations and the impact on our clients.

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