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

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 Department of Labor overtime regulations, which were scheduled to go into effect on December 1, 2016, from taking effect.¹ As a result of the court's decision, these regulations will likely not go into effect prior to the inauguration of President-elect Trump on January 20, 2017. Since Mr. Trump and Republicans in Congress have attacked these rules as detrimental to the economy, the rules may never take effect (or may become effective only in a substantially curtailed form).²

Background

On May 18, 2016, the United States Department of Labor 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 US\$455 per week (US\$23,660 per year) to US\$913 per week (US\$47,476 per year)³ 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 as of December 1, 2016.

What Happened?

Enforcement of the new regulations was enjoined by the Eastern District of Texas on November 22, 2016. The court determined that it need not defer to the Department of Labor'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.⁴ Notably, the injunction applies in all 50 states, not just the 21 states that are plaintiffs in the case.

Practical Guidance

If Employers Have not Notified Employees of Changes in Compensation

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 Notified Employees of Changes

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 walking back announced changes. For example, undoing announced salary increases may be unpopular with employees. In most cases, maintaining exempt salaried status for the time being pending further developments for employees who were told they would become hourly employees should be less difficult than abandoning announced increases.

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. Also not yet clear is whether the incoming Trump administration and/or the new Congress will attempt to roll back this rule via new legislation or other rulemaking, although invalidating or scaling back this rule appears to align with the Trump administration's stated general goal of streamlining regulation. 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).

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Endnotes

¹ [State of Nevada, et al. v. United States Department of Labor, et al.](#) 1:2016cv00407 (September 20, 2016),

² For a discussion of possible ways President-elect Trump and a Republican Congress could invalidate the Department of Labor's proposed overtime rules, see Latham & Watkins *Client Alert* Number 2033 "[Examining the Impact of the 2016 US Elections on Executive Compensation](#)," November 14, 2016.

³ The decision cites slightly higher US\$921 week / US\$47,892 per year figures that were set forth in the proposed rules.

⁴ The court determined that the regulation exceeded the authority of the Department of Labor because Congress had not authorized the Department to set a minimum salary that would exclude employees who otherwise were employed in a bona fide executive, administrative or professional capacity.