November 30, 2016

Texas Judge Blocks Implementation of U.S. DOL's Impending Salary Threshold Increase for Exempt Employees

Yesterday afternoon, in action brought by 21 states, a **Texas federal court issued an injunction** blocking the final rule of the U.S. Department of Labor ("DOL") regarding Fair Labor Standards Act ("FLSA") exemptions, which included an increase in the minimum salary requirement applicable to most exemptions. Specifically, as reported in **our firm's previous post**, and among other changes, under the DOL's final rule the minimum salary threshold for the white collar exemptions (i.e., administrative, executive, and professional exemptions, 29 U.S.C. § 213(a)(1)) was to increase to $913 per week, or $47,476 per year (more than doubling the current threshold of $455 per week/$23,600 annually). The rule was slated to become effective Dec. 1, 2016. Employers across the country have been preparing for these changes for months, and many have already implemented the actions necessary to ensure compliance.

The United States District Court for the Eastern District of Texas held a hearing on this issue on Nov. 16, 2016. At the hearing, the court's questioning telegraphed its apparent belief that the rulemaking was suspect. Ultimately, the court held that the DOL "exceeded its delegated authority and ignore[d] Congress's intent by raising the minimum salary level such that it supplants the duties test" for the exemptions. The order imposes only a temporary injunction pending further order of the court—it does not mean that the DOL's rule will not ultimately go into effect, but implementation on Dec. 1, 2016, now is unlikely. The last major DOL regulation that was enjoined was the DOL's companionship exemption rule, which was stalled for over a year in court challenges and litigation; ultimately, though, the rule was implemented. Here, it is expected that the DOL will challenge the Texas court's ruling through appellate proceedings. Notably, though, it is difficult to predict with accuracy the position the new administration will take on this issue (although it likely will be against implementation of the rule, which is widely viewed as pro-employee).

While the court process unfolds, it is advisable that employers who have already made changes "stay the course," given the difficulty in predicting whether the rule will ultimately go into effect. Although no longer imminently effective, the rule still provides employers with a unique opportunity to examine their employee ranks and reclassify those exempt workers who may not presently be appropriately classified, without raising the red flags that normally accompany such changes in status. Indeed, the injunction gives employers an extended opportunity to conduct such an audit, preferably in conjunction with legal counsel.

We will continue to provide periodic updates as more information becomes available regarding this injunction and rulemaking.

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This document is intended to provide you with general information regarding Fair Labor Standards Act ("FLSA") exemptions. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

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