

November 2016

LABOR & EMPLOYMENT LAW ALERT

USDOL FINAL OVERTIME RULE TEMPORARILY BLOCKED BY NATIONWIDE INJUNCTION

On November 22, 2016, a Texas federal judge issued a nationwide injunction blocking the implementation of the U.S. Department of Labor overtime rule which was scheduled to take effect on December 1. As we previously advised, the new rule would have increased the minimum salary level required for an employee to qualify for the "white collar" exemptions from overtime compensation from \$455 to \$913 weekly. As a result of this surprising decision, the rule has been put on hold, and (for now) the minimum salary threshold remains at \$455.

The Texas court reasoned that the Fair Labor Standards Act (FLSA) contemplated a "duties test" but not a "minimum salary level" to define the overtime pay exemption. Therefore, it ruled that the DOL exceeded its authority by impermissibly raising the minimum salary level "such that it supplants the duties test."

The injunction temporarily halts the implementation of the new rule while the court rules on the merits. Although it is too early to speculate, the language used by the court suggests that it considers the "duties test" the cornerstone of the overtime exemptions, and the DOL's impermissible dilution of that test by also requiring an onerous salary minimum is inconsistent with the FLSA.

As a result of this nearly eleventh-hour injunction, and with our sympathy for the associated administrative and employee morale headaches, employers are free (but not required) to postpone their implementation of measures designed to comply with the new DOL overtime rule. Those employers who already have rolled out new measures to comply with the new rule similarly are free (again, but not required) to roll back those measures. Until we hear further from the court, what is old is new again -- those employees who are paid at least \$455 on a salary basis and perform exempt duties as set forth in the DOL regulations still will qualify for the FLSA overtime exemptions.

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We are available to provide counsel and guidance concerning these issues, as well as other management labor and employment law concerns. For additional information, please contact one of the attorneys named below or the attorney with whom you have a primary relationship.

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This information is provided as a public service to highlight matters of current interest and does not imply an attorney-client relationship. It is not intended to constitute a full review of any subject matter, nor is it a substitute for obtaining specific legal advice from appropriate counsel.

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