

IMPORTANT NEWS ALERT: FLSA INJUNCTION

On November 22, 2016, the United States District Court for the Eastern District of Texas issued a nationwide emergency preliminary injunction on the FLSA regulations scheduled to take effect on December 1, 2016. The emergency injunction was ordered after suit was filed by twenty-one (21) States and later consolidated with a suit filed by fifty-one (51) other business organizations, challenging the imposition and enforcement of the new regulations. As a result, the United States Department of Labor is enjoined from implementing and enforcing the new rules on the salary level test or other provisions contained in the new/amended regulations scheduled to take effect on December 1, 2016, in any State, even if the State you employ persons in was not a party to the lawsuit. In short, the new regulations regarding the salary level test will NOT take effect on December 1.

In his 20-page ruling, United States District Judge Amos Mazzant held that "the Department's salary level under the Final Rule and the automatic updating mechanism are without statutory authority. The Court concludes that the governing statute for the EAP exemption, 29 U.S.C. § 213(a)(1), is plain and unambiguous and no deference is owed to the Department regarding its interpretation." The injunction is temporary and suspends the implementation of the new overtime regulations until the Court has time to issue a complete ruling on the merits of the case. However, that process is likely to take weeks, if not months, to occur.

This is a major development and needs your immediate attention. As you will recall, the regulations impacted the salary level test and would raise the salary level for white collar exemptions to \$913 per week/\$47,476 annual, among others. As a result of this preliminary injunction, the current salary level test of \$455 per week/\$23,660 annual, will remain in effect on December 1, 2016, and after, unless and until the injunction is lifted or ended by the Court, or reversed on appeal. Further, with the incoming Trump Administration, this is one set of regulations that may be rolled back. If the Trump Administration rolls back the regulation or withdraws the Department of Labor's court challenge (on behalf of the United States) to the State Plaintiffs' lawsuit, the current salary level will remain in place for the foreseeable future. As such, the situation remains fluid.

The difficulty for employers is how to deal with this fluid situation. As a practical legal matter, employees who you currently classify as exempt will remain exempt at their current salary level on and after December 1. Further, no overtime pay is required for those exempt employees, even if he or she has a current salary below \$913 per week and \$47,476 annually. Importantly, for exempt employees who would become nonexempt if the new regulations on salary level are enacted at some time in the future, we do NOT recommend you paying overtime while the preliminary injunction is in place. We recommend this so that you do not establish a custom and practice that those employees in essence are treated as nonexempt if they remain exempt under the now-existing regulations.

However, some of you may have informed employees of new salary levels they will be paid effective December 1. Based upon this recent court decision, generally, you can either inform employees that there will be no change in his/her current salary or can move forward with implementation of new salary. That is a business decision. Practically speaking, if you have advised an employee of an increase in salary, it could result in morale issues due to the employee relying on the increase.

Please feel free to contact me to discuss any questions you might have, either in general or regarding your specific situation.

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