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New Federal Overtime Rules Are Gone For Now — What's Next?

On August 31, 2017, a federal district court in Texas granted summary judgment in favor of fifty-five business groups and twenty-one states that sought to enjoin Obama-era changes to overtime pay rules. Those changes would have more than doubled a salary level threshold for common “white collar” overtime exemption categories and impacted an estimated 4.2 million U.S. workers currently ineligible for overtime. Now that the Justice Department has officially ended any effort to appeal the District Court’s decision, those rules no longer have any potential legal effect. What changes to the law may come next is uncertain.

As background, Congress enacted the Fair Labor Standards Act (“FLSA”) nearly eighty years ago. The FLSA imposes a federal minimum wage (currently \$7.25 per hour) for all hours worked by an employee, and overtime pay at one and one-half times the employee’s regular rate of pay for all hours worked above forty in a week. The FLSA contains several exemptions however, and the most common of which are known as “white collar” exemptions, which exempt from minimum wage and overtime pay “any employee employed in a bona fide executive, administrative, or professional capacity.” The FLSA does not expressly define the terms “bona fide executive, administrative, or professional capacity” but rather delegated to the Secretary of Labor the power to define and delimit these terms through regulations.

Since the passage of the FLSA, the Department of Labor (“DOL”) has enacted and amended its exemption regulations several times. Most significantly, the DOL requires that exempt white collar employees be paid by a salary (the “salary-basis test”), and meet requirements related to both a minimum salary level (the “salary-level test”), and certain duties relative to the employee’s executive, administrative, or professional capacity (the “duties test”).

The current minimum salary level for white collar exemption status is \$455 per week (\$23,660 annually). In March of 2014, however, President Obama directed the Secretary of Labor to revise and modernize its overtime regulations for white collar exempt employees. After a period for public comments on proposed rule changes, the DOL published its “Final Rule” on May 23, 2016. Under the Final Rule, the DOL raised the minimum salary level for exempt employees from \$455 per week (\$23,660 annually) to \$913 weekly (\$47,476 annually). The DOL set this new salary level based on an assessment of the 40th percentile pay rate of full-time salaried workers in the lowest wage region of the country, currently the South. The Final Rule also established an automatic updating mechanism that would have adjusted the minimum salary level every three years.

The Final Rule was not without opposition, however. The State of Nevada and twenty other states filed suit against the DOL and its agents to challenge the Final Rule before it was set to take effect on December 1, 2016. The states sought emergency injunctive relief from the Final Rule taking effect. Additionally, fifty-five business groups filed a similar action. The U.S. District Court for the Eastern District of Texas consolidated both actions, and preliminarily enjoined the Final Rule from taking effect on a nationwide basis while the plaintiff parties filed substantive motions to challenge the Constitutionality of the Final Rule.

The District Court granted summary judgment in favor of the plaintiffs after considering whether the DOL properly interpreted the FLSA or overstepped the authority granted to it by Congress. In reaching its decision, the District Court relied heavily on dictionary definitions of the language “bona fide executive, administrative, or professional capacity,” and noted the disruptive impact of a change the DOL itself estimated would change the pay structure

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applicable to 4.2 million currently exempt employees. While the Court did not flatly reject the notion that a “salary-level test” increase might be appropriate, it concluded that an increase that more than doubles the existing salary level threshold would improperly overshadow the “duties test,” which it found to be an equally if not more crucial component of the FLSA’s purpose for exempting certain types of employment instead of others.

Although the Obama-era Final Rule is effectively defeated now that the Justice Department has abandoned efforts to appeal the set-back, the question of revised exemption rules is not eliminated. The Court’s decision left open the possibility of a salary level threshold increase for exemption status. Moreover, the DOL under President Trump has also demonstrated an interest in revising national wage and hour rules. On July 26, 2017, the current administration’s DOL published a Request for Information as to what potential new round of regulations the DOL should introduce on eligibility for overtime pay. The DOL accepted public comments and its conclusions may result in additional proposed rulemaking in short order.

The area of wage and hour law is a challenge to navigate, especially when change is in the air. Future regulations are unlikely to apply retroactively, but employers are wise to keep a close eye on this area of law, especially as companies plan new annual budgets for labor costs. Also remain mindful of the fact that the federal FLSA does not preempt state laws, which often impose higher minimum wages and other obligations for employers in their treatment of both exempt and non-exempt employees.

FisherBroyles attorneys are available to help your business review or audit its pay practices to efficiently reduce the risks of current or future noncompliance and misclassification of your employees.

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