



Federal Court Invalidates New Overtime Rule

**BY SEAN MCCRORY, MAURY BASKIN, ROB FRIEDMAN, AND TAMMY MCCUTCHEN ON
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On August 31, 2017, the U.S. District Court for the Eastern District of Texas granted summary judgment for a diverse coalition of 55 business groups, led by the U.S. Chamber of Commerce and joined by numerous state governments, challenging the U.S. Department of Labor's (DOL) redefinition of who qualifies as an exempt employee under the Fair Labor Standards Act (FLSA).¹ The decision effectively nullifies the DOL rule in its entirety. Had the rule gone into effect, it would have more than doubled the minimum salary level for exempt white collar employees from \$455 per week (\$23,660 annually) to \$913 per week (\$47,476 annually).

The court previously preliminarily enjoined the rule from taking effect, on a nationwide basis, on November 22, 2016. The DOL filed an appeal from that preliminary injunction, which remains pending at this time. But that appeal is likely rendered moot by the district court's new decision, which converts the preliminary injunction into a final judgment declaring the rule to be "invalid" for all purposes.

In the new, final order, the court held that the DOL's doubling of the salary requirement was an unwarranted departure from Congress's unambiguous intent to exempt executive, administrative and professional (EAP) employees based on the duties they perform instead of using an arbitrarily high and increasing salary amount to define who is exempt. The new rule would have increased the salary level for exempt employees every three years and would have excluded 4.2 million employees from the EAP exemption even though these employees perform exempt job duties.

The court's decision means the previous injunction blocking the new rule from going into effect will remain in place permanently, absent a new appeal (if successful) by the DOL. The Department has 60 days to decide whether to file a new appeal, and there are strong reasons for it not to do so, including the fact that the Department has published a Request for Information in preparation for a new rulemaking to reconsider the entire salary threshold issue.

The new decision is important because it answers a number of questions that had been raised regarding the earlier preliminary injunction. First, the court made clear that the rule was enjoined before its scheduled effective date of December 1, 2016, so that the rule never went into effect. The court also made clear that the scope of the preliminary injunction protected all businesses and state governments nationwide from compliance with the new rule, notwithstanding some recent claims to the contrary. Finally, the court clarified its previous order by holding that it did *not* find the DOL entirely lacking in authority to set a salary threshold (the primary issue on which the Department filed its original appeal). Rather, the court held only that the Department lacked authority to set a salary threshold so high that it defeated the purpose of the FLSA to establish a functional test for exempt status based upon job duties.

Littler Mendelson and Littler's Workplace Policy Institute will continue to take a leadership role in litigating and commenting on this important topic, and we will be specifically filing comments with the DOL in response to its Request for Information on possible reconsideration of the salary threshold in light of the court's new decision.

¹ The Business Associations are represented by Littler Mendelson, P.C. (Maury Baskin, Rob Friedman, Tammy McCutchen and Sean McCrory) in the consolidated case of *Plano Chamber of Commerce et. al. v. Thomas E. Perez, et. al.* No. 4:16-cv-732-ALM.

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