

DOL Overtime Regulations Challenged in Federal Court: Decision Expected November 22

By Hope Eastman

Employer Takeaway: Don't hold your breath and keep planning for the December 1 deadline.

Two lawsuits are pending in the U.S. District Court for the Eastern District of Texas, challenging the DOL's increase in the salary threshold for exempt employees, from \$23,660 to \$47,476. One suit has been brought by 21 states, challenging the legal authority of the DOL to increase the FLSA threshold by regulation. It also challenges the triennial the annual increase without compliance with the Administrative Procedure Act's notice and comment regulations.

The second suit has been brought by the U.S. Chamber of Commerce, the National Association of Manufacturers and the National Retail Federation, challenging the amount of the increase, not the authority to increase it at all. It also is challenging the automatic increase provision but not the authority to raise the threshold at all. The suits have been consolidated and both are seeking a nationwide temporary injunction to delay the rule's implementation.

Legal experts disagree on whether the District Court will issue the temporary injunction. At a hearing on the motion, the Judge reportedly said that he will not consider what President Elect Donald Trump will do with the rule, but rather will focus on the legality of the regulation before him. He has expressed doubts about the magnitude of the change in salary level and concern that workers doing the same job (and fulfilling the duties tests) who are paid \$47,000 will be treated differently than the next person getting paid \$47,500.

The best guidance for employers is to continue to prepare to meet the December 1 deadline for implementation. Stay tuned for developments and let us know if we can help.