

# New Overtime Rules Blocked by Federal Court

By Jessica Summers

**Summary:** Striking a significant blow to one of the Obama Administration's biggest labor achievements, on November 23, 2016, a federal district court issued a nationwide injunction preventing the Department of Labor's new overtime rules from going into effect on December 1, 2016.

On May 18, 2016, the Department of Labor (DOL) issued its highly anticipated final rule modifying the exemptions to the FLSA overtime rules for white collar (executive, administrative, professional and computing) and highly compensated employees. As described in detail in our earlier blog, the new rules significantly impacted the salary thresholds for these exemptions and added a provision to allow the thresholds to be automatically increased every three years.

Twenty-one states and a number of business groups brought lawsuits challenging the new rules. These cases were consolidated into a single case in the U.S. District Court for the Eastern District of Texas. Based on the expected timetable for the case, the Plaintiffs asked the Court to issue a temporary injunction to stay implementation of the overtime rule while the case runs its course. In support of their request, the Plaintiffs argued that allowing the rule to go into effect on December 1 would cause irreparable harm in the event that the challenge was ultimately successful.

On November 22, 2016, District Court Judge Mazzant granted the request and issued a temporary injunction indefinitely blocking the new overtime rules from going into effect. In his decision, the Judge stated that the new rules were outside the scope of the DOL's regulatory authority and contrary to congressional intent. Specifically, the Judge found that Congress intended the overtime exemptions to be delineated based on an employee's duties and that the new rules would raise the salary threshold so high that they would effectively "supplant[] the duties test." Although the government argued that the injunction should only apply in those states involved in the case, Judge Mazzant rejected this approach and instead issued the injunction nationwide (which he has the authority to do as a federal judge).

## ***What does this mean for the future of the overtime rules?***

Frankly, it is anyone's best guess. That said, the injunction does make it more than likely that the overtime rules in their current form will not go into effect.

First, as to the injunction itself, prior to the case being concluded, there are two ways that the temporary injunction could be lifted. First, Judge Mazzant could lift the injunction. However, given the language in his decision, this seems unlikely. Second, the Fifth Circuit Court of Appeals, on an appeal by the government, could overturn the temporary injunction. Given the Fifth Circuit's conservative swing, this too is unlikely.

Accordingly, it is probable that the overtime rules will not go into effect before Donald Trump becomes President. This will significantly change the dynamic and options surrounding the overtime rules that Trump previously faced. Had the rules gone into effect on December 1, the rules would have been in effect for almost two months before Trump took office, making it less politically palatable to change them, particularly given Trump's populist base of support. Now, that the rules have been stayed, we may see the new Trump Administration be more aggressive about engaging in the notice and comment process to change or repeal the rule or pushing for legislation to do the same (though such legislation would need bi-partisan support to overcome a filibuster in the Senate).

## ***So what's an employer to do?***

Employers facing this news will find themselves in one of the following four categories: (1) some employers have already implemented the changes to comply with the new overtime rules, including

reclassifying employees or increasing employee salaries; (2) some employers have not yet implemented the changes but have already informed employees that they will be reclassified or getting salaries increases effective December 1; (3) some employers have not yet implemented the changes or communicated with employees about the changes; and (4) some employers concluded that they did not need to make any changes to comply with the new overtime rules.

Employers who have not yet implemented or communicated any changes (either because they were waiting to do so or because none were necessary) now have the luxury to take a wait and see approach. For these employers, the simplest course will be to take no action on the overtime rules, pending clarity as to whether the rules will ever go into effect and whether there will be any changes to the rules.

Employers who have already implemented or communicated changes are in a more difficult position. Because the injunction was issued just over a week before the regulations were to go into effect, we expect that many employers will find themselves in these categories. For employers who have not yet implemented the changes but have merely communicated with employees about them, unwinding the changes and switching to a wait and see approach may be easier and simply a matter of effectively communicating with employees about why the changes will not be implemented on December 1.

The biggest challenges will be borne by employers who have already implemented the changes and now face the difficult question of whether to continue on the path they were on to comply with the new overtime regulations or return to their prior practices. There is no easy answer and a number of factors will need to be taken into account, including the number of employees affected, the costs and administrative burdens of maintaining or reversing the changes, and employee morale.

For employers who ultimately decide to rollback changes that they have already implemented or communicated, one way to present this to employees would be to explain that a federal court has stayed the new rules and that the employer will be deferring (rather than cancelling) the previously presented changes until the legal situation surrounding the new rules is clarified.

Regardless of what category an employer finds itself in, it is important to remember that, pending the implementation of the new overtime rules, the prior rules are still in effect. When auditing their employee classifications to determine how to respond to the new overtime rules, many employers identified employees who were misclassified even under the old rule. Even with the new rules now on hold, any misclassifications that predated the new overtime rules will continue to be a source of potential liability for employers if they are not corrected.

At the end of the day, employers who haven't done or communicated anything to their employees with respect to the new overtime rules should hold off on doing anything now. Employers who have already made or communicated changes are well advised to consult with legal counsel before rolling back any changes.

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