PALEY ROTHMAN
ATTORNEYS AT LAW

What Ever Happened to the New Overtime Rules?

By Jessica Summers

SUMMARY: The future of the new overtime rules that were set to go into effect last December remains uncertain, as the court order enjoining the rules remains in effect and the Trump Administration's Department of Labor has not yet decided how it will handle the issue. For now, employers need only comply with the preexisting overtime rules.

As we previously reported, 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. If they ever come to fruition in their current form (which is now unlikely), these new rules would significantly increase the salary thresholds for the Fair Labor Standards Act (FLSA) overtime exemptions for white collar (executive, administrative, professional and computing) and highly compensated employees, and then automatically increase those thresholds every three years.

An appeal of the district court's decision, which was filed by the Obama Department of Labor ("DOL"), is now pending before the Fifth Circuit Court of Appeals. However, the Trump Administration, which lacked a Secretary of Labor until last week, appears unsure about what to do with the case. The Trump DOL has repeatedly sought, and received, extensions for its deadline to file a reply brief, thereby bumping the timeline of the entire case. Most recently, the Administration's response deadline was moved to June 30, 2017.

Many believe that the Trump DOL will ultimately drop the lawsuit. However, some experts have suggested that this would be a mistake, as it could undermine the Administration's ability to issue new rules providing for a more moderate increase to the salary thresholds (which recently-confirmed Secretary of Labor Alexander Acosta indicated during his confirmation hearings that he would support). This is because, in indefinitely blocking Obama overtime rules, the federal district court reasoned that the DOL's increase in the salary threshold was contrary to the congressional intent that exemptions be based on an employee's job duties and thereby exceeded the DOL's regulatory authority. If the Trump Administration does not see the case through and lets this decision stand, it creates an open question as to whether any future efforts to increase the salary threshold would be construed to exceed the DOL's regulatory authority.

Even if the DOL pulls out of the case, there is a chance that it could continue to move forward as the Texas AFL-CIO has moved to intervene as a party in the case if the government drops out, and the Court of Appeals also has the authority to appoint an independent advocate to argue the DOL's side if it pulls out.

Now that Secretary Acosta has taken the reigns at the DOL, movement on this issue could come as early as this summer. In all likelihood, even if the DOL stays in the case, the Trump Administration will not allow the Obama overtime rule to stand in its current form and will instead pursue administrative avenues to modify the rules (which is a slow process).

Given that the district court's stay was issued just days before the effective date of the new overtime rules, many employers had already implemented, or begun to implement, the new overtime rules.
For those employers that paused or stopped implementation efforts pending the outcome of the court case, the wait continues. For now, all employers simply need to ensure that they are in full compliance with the preexisting overtime rules. What the future will bring in this area remains to be seen.

© 2024 – All Rights Reserved