

Federal Judge Strikes Down ‘White Collar’ Overtime Rule

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A federal judge in Texas has invalidated a Department of Labor rule that would have made more than 4 million “white collar” workers eligible for overtime pay, holding that the agency overstepped its authority by adopting a salary-based test that supplants the actual duties of workers.

Sitting in Sherman, Texas, U.S. District Judge Amos Mazzant sided with business groups and 21 states that challenged the Final Rule issued in May 2016 by the Obama administration, which would have effectively more than doubled the minimum annual salary threshold for the Fair Labor Standards Act’s “white collar” executive, administrative and professional (“EAP”) exemptions, from \$455 per week (\$23,660 annually) to \$913 per week (\$47,476 annually).

“This significant increase would essentially make an employee’s duties, functions, or tasks irrelevant if the employee’s salary falls below the new minimum salary level,” the judge wrote in his August 31-opinion. “As a result, entire categories of previously exempt employees who perform ‘bona fide executive, administrative, or professional capacity’ duties would now qualify for the EAP exemption based on salary alone. . . . This is not what Congress intended with the EAP exemption.”

The judge also found unlawful a provision in the Final Rule that would have automatically updated the minimum salary level every three years.

Judge Mazzant’s decision was expected after he blocked the DOL from implementing the revised rule on December 1, 2016, with a nationwide preliminary injunction.

It also comes as the Trump Administration has begun the process of revising the “white collar” exemption going forward. On July 26, 2017, DOL published a request for information from employers, unions, and other groups.

Although the judge invalidated the salary test in the Final Rule, he noted that his ruling does not foreclose its use going forward. “This opinion is not making any assessments regarding the general lawfulness of the salary-level test or the Department’s authority to implement such a test.” In fact, the judge wrote that the agency could have adjusted the current minimum salary level, established in 2004, for inflation without issue. “[W]e wouldn’t be here today ... because [the salary level] would still be operating more the way it has ... as more of a floor.”

For now, employers will be held to the current “white collar” exemption test, including the \$455 per week salary test, when determining whether a worker is exempt from overtime pay under the FLSA.

It is unclear what the DOL would set as a minimum salary threshold, although it is likely to be substantially less than the \$47,476 floor in the pending overtime rule. During his confirmation hearing in March, Labor Secretary Alexander Acosta said the \$47,476 was excessive and indicated that he

was open to a more reasonable salary level-“somewhere around \$33,000.” He also noted that it has not been adjusted in over 10 years.

For more information on this topic, please contact a member of Benesch's Labor & Employment Practice Group.

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