CLIENT ALERTS & INSIGHTS

Federal Judge Temporarily Blocks New Overtime Rule

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A federal Judge in Texas yesterday issued an order temporarily barring the Department of Labor ("DOL") from enforcing its much-publicized new overtime rule, just over one week before the rule's December 1 effective date.

The new rule, which would have represented a landmark change to the overtime rules under the Fair Labor Standards Act ("FLSA"), would have effectively more than doubled the minimum annual salary threshold for the FLSA's "white collar" executive, administrative and professional exemptions. By raising the threshold from $23,660 to $47,476 per year, the DOL estimated that approximately 4 million workers would have become immediately eligible to earn overtime premium pay or have their salaries raised to the new threshold. The new rule would also have automatically increased the new minimum salary threshold every three years, starting on January 1, 2020, to keep pace with inflation.

Underlying the decision was a case filed by twenty-one states in the U.S. District Court for the Eastern District of Texas. Fifty business organizations also filed a similar case in the same court just after the states had filed their case. In their case, the states moved for a preliminary injunction on the grounds that the DOL exceeded its authority in promulgating the new rule on several statutory and constitutional grounds. The business organizations were also permitted to present certain of their arguments in supporting the states' motion for a preliminary injunction.

In siding with the states, District Judge Amos Mazzant held that the plain language of the FLSA is clear in defining the type of employees who qualify for the white collar overtime exemptions. Judge Mazzant explained that Congress defined the "white collar" exemptions based on an employee's duties, not on his or her salary. Judge Mazzant concluded that, "Congress did not intend salary to categorically exclude an employee with [exempt] duties from the exemption." The Judge explicitly challenged the authority of the DOL to condition the white collar exemptions on any salary requirement, declaring, "[i]f Congress intended the salary requirement to supplant the duties test, then Congress, and not the [DOL], should make that change."

Judge Mazzant also explained that the automatic increase component of the new rule was unlawful. "Because the Final Rule is unlawful, the Court concludes the [DOL] also lacks the authority to implement the automatic updating mechanism."

Judge Mazzant's ruling is a bit surprising. Many analysts thought that because he was one of President Obama's first judicial appointees, he would have a tendency to side with the DOL's positions.

Many employers had spent considerable efforts over the past year in planning how to implement the new overtime rule. The DOL also spent considerable efforts in planning how to enforce it. For now,

we believe that employers should put their plans on hold, or modify them to reflect the new political climate.

We also believe that the rule's future is in serious jeopardy. Although the DOL can certainly appeal Judge Mazzant's ruling, by the time the appeal would be considered, the DOL should be in new hands and focused on a new philosophy. Even if the Fifth Circuit Court of Appeals would expedite the DOL's appeal, we believe it to be unlikely that the DOL would ignore the political winds of change that will blow into Washington, D.C. in January.

A final thought. Judge Mazzant's ruling put the current salary threshold and all of the existing rules dealing with the salary basis test into question. At the end of the day, the DOL's aggressive approach to making more employees overtime-eligible could backfire.

Benesch will keep you updated regarding any future court rulings or actions that would affect the enforceability of the new overtime rule.

If you have any questions, please contact an attorney in Benesch's Labor & Employment Practice Group.