

Labor Department Plans to Revise “White Collar” Overtime Rule

JULY 5, 2017

The U.S. Department of Labor (“DOL”) plans to revise its pending overtime rule, which would have more than doubled the minimum annual salary for workers in “white collar” executive, administrative and professional positions to be “exempt” from eligibility for overtime wages.

In late November, Texas District Judge Amos Mazzant blocked the DOL from implementing the revised rule with a nationwide preliminary injunction. Judge Mazzant held 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.”

In a brief filed with the Fifth Circuit Court of Appeals, the government changed position, stating: “[DOL] has decided not to advocate for the specific salary level (\$913 per week) set in the final rule at this time and intends to undertake further rulemaking to determine what the salary level should be.”

DOL, however, intends to wait until after the Fifth Circuit decides whether the regulatory agency has the statutory authority to require employers to meet any salary test before revising the pending overtime rule.

As the government told the Fifth Circuit: “The rulemaking process imposes significant burdens on both the promulgating agency and the public, and [DOL] is reluctant to issue a proposal predicated on its authority to establish a salary level test while this litigation remains pending.”

Instead, DOL will publish a request for information seeking public input on several questions that will aid in the development of a proposal.

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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