

The Obama Administration's Overtime Final Rule: Unlawful and Revisited

NOVEMBER 2, 2017

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On October 30, 2017, the Department of Labor (the "Department") filed a notice to appeal a decision by Judge Amos Mazzant of the Eastern District of Texas, holding that the Overtime Final Rule ("Final Rule") was unlawful. The Department announced that once the appeal is docketed, the Department of Justice will file a motion with the United States Court of Appeals for the Fifth Circuit to hold the appeal in abeyance while the Department revisits the Final Rule and undertakes further rulemaking.

The Final Rule was set to be effective on December 1, 2016. Over 55 business groups and 21 states challenged the Final Rule by filing actions, which were consolidated, in the United States District Courts in Texas. *State of Nevada v. United States Department of Labor*, No. 4:16-cv-731; *Plano Chamber of Commerce v. Acosta*, No. 4:16-cv-732.

On November 22, 2016, Judge Mazzant granted the State Plaintiff's Motion for Preliminary Injunction, thereby enjoining enforcement of the Final Rule on a nationwide basis. The Department filed a notice to appeal the injunction, but the Department did not actively defend the Final Rule after President Trump took office.

Also pending before Judge Mazzant was Business Plaintiff's Motion for Summary Judgment regarding the validity of the Final Rule. On August 31, 2017, the judge issued an opinion and order holding that the Final Rule was unlawful. Judge Mazzant concluded that the Department did not have the authority to use solely a salary-level test to affect changes to the overtime exemption of employees functioning in bona fide executive, administrative, or professional capacities. According to Judge Mazzant, it was Congress' intent to exempt from overtime pay employees who perform "bona fide executive, administrative, or professional capacity" duties. Thus, the Department had to also consider the duties of employees employed in bona fide executive, administrative, or professional capacities in making changes to the availability of the exemption.

A few changes that the Final Rule, now invalid, would have made if enacted include: (1) an increase of the annual salary threshold for an overtime exempt position to \$47,476; (2) an automatic updating mechanism that adjusts the minimum salary level every three years^[1]; (3) the use of nondiscretionary bonuses to satisfy up to 10% of the general salary threshold (if incentives were made on a quarterly or more frequent basis); and (4) an increase of the annual highly compensated employee's salary threshold from \$100,000 to \$134,004.

Looking Forward: Employers should note that the Final Rule will not take effect for now but should seek counsel regarding this issue. Given that the DOL will be conducting further rulemaking, the Final Rule likely will not survive as written. We will continue to monitor developments on this issue and provide an update.

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

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[1] Because the Court determined that the Final Rule was unlawful, the Court also held that the automatic updating mechanism was unlawful.