

FYI[®] Alert

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5th Circuit to Expedite Appeal of Overtime Ruling

On December 1, the DOL filed a notice of appeal from a federal court order that temporarily blocked the agency's new overtime rule from taking effect. The following day, it asked the 5th Circuit to expedite the appeal. Yesterday, the court agreed and ordered oral argument to be scheduled as expeditiously as possible after January 31, 2017. Employers will want to continue monitoring developments closely.

Background

In separate lawsuits filed on September 20, the attorneys general from 21 states and a coalition of more than 55 business organizations challenged the DOL's new overtime rule that would have more than doubled the minimum salary level for a white-collar exemption from federal overtime pay requirements on December 1. (See our *FYI Alert* from [September 21, 2016](#).) On November 22, US District Judge Amos L. Mazzant granted a temporary injunction, blocking the new overtime rule from taking effect nationwide. (See our [November 23, 2016 FYI Alert](#).)

On December 1, the Department of Justice on behalf of the DOL filed a notice to appeal the injunction to the US Court of Appeals for the 5th Circuit. (See our [December 2, 2016 FYI Alert](#).) The following day, the government moved to expedite the appeal, requesting briefing to be completed by February 7, 2017, and argument scheduled as soon as possible thereafter.

5th Circuit Grants Expedited Hearing

On December 8, the 5th Circuit agreed to fast-track the appeal. The court set the following briefing schedule, which is more accelerated than the DOL had requested:

- December 16 — DOL's opening brief due
- December 23 — Amicus briefs in support of the DOL due
- January 17 — States' response brief due
- January 24 — Amicus briefs in support of the DOL due
- January 31 — DOL's reply brief due



Oral argument is to be scheduled for the first available date after January 31, 2017.

Before the briefing schedule ends, President-elect Trump will be in office and the 115th Congress will have been sworn in. Both the incoming administration and the new Congress will have a window to take action while the appeal is pending and before the 5th Circuit issues a decision. In the meantime, the injunction remains in effect and the expanded overtime rule remains on hold pending further court order.

Comment. During this continued period of uncertainty, employers will want to carefully monitor schedules and hours worked by their employees. At least for now, they may want to consider keeping closer tabs on hours worked by currently exempt employees who could be entitled to overtime pay if the DOL appeal is successful and the rule enforced retroactively.

In Closing

The 5th Circuit's order fast-tracking the DOL's appeal of the preliminary injunction ruling does not change the current status of the overtime rule. It is still on hold across the country. Now in the court's hands but with a new Congress and new administration poised to take office, its fate is up in the air. Employers will want to closely monitor developments on all fronts.

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