

## Obama DOL's Overtime Rule Overruled

On August 31, a Texas federal judge invalidated the Obama administration's rule that would have more than doubled the minimum salary threshold for the so-called "white-collar" exemptions from the Fair Labor Standards Act's overtime pay requirements. With the dismissal of the DOJ's appeal of the preliminary injunction that blocked the rule from taking effect, the focus is on the DOL's next steps. Employers will want to monitor future developments closely.

### Background

In June 2015, the Obama administration proposed the expansion of overtime eligibility by more than doubling the minimum salary threshold for the Fair Labor Standards Act's (FLSA's) executive, administrative and professional (EAP) exemptions – the so-called "white-collar" exemptions. The following year, the DOL unveiled the final rule that was primed to make millions of workers eligible for overtime pay. (See our [May 18, 2016 FYI Alert](#).)

In separate lawsuits filed in federal district court in Texas, the attorneys general of 21 states and a coalition of more than 55 business organizations challenged the controversial rule. The states sought a nationwide preliminary injunction to block the rule from taking effect on December 1, 2016, while the business coalition asked the court to strike it down immediately. Concluding that the DOL had exceeded its rulemaking authority, District Judge Amos Mazzant [issued](#) a temporary injunction last November that put the rule on hold. (See our [November 23, 2016 FYI Alert](#).)

The Obama administration quickly appealed to the 5<sup>th</sup> Circuit, but the matter was not resolved before the new administration took office. (See our [December 9, 2016 FYI Alert](#).) The Trump administration made clear that it would not defend the rule on appeal, but it would defend the DOL's right to set a minimum salary level for an EAP exemption. Oral argument was scheduled for October 3.

### Texas Court Strikes Down Overtime Rule

On August 31, 2017, District Judge Mazzant [granted](#) summary judgment in favor of the business groups and states that had challenged the Obama administration's overtime rule. Among other things, the court held that the DOL did not have the authority to use a salary level test that supplants the need to consider whether employees performed *bona fide* EAP duties. The court concluded that



the rule effectively eliminated the duties test required by the FLSA by more than doubling the previous minimum salary level, and found its automatic updating mechanism unlawful for similar reasons.

While declaring the 2016 overtime rule invalid, the court made clear that it was not assessing the “general lawfulness of the salary-level test” or whether the DOL has authority to implement such a test for the EAP exemptions. Rather, it found that this rule went too far, basing an employee’s overtime status predominantly on salary. With that clarification, the DOL moved to withdraw its appeal of the November 2016 preliminary injunction as moot. The 5<sup>th</sup> Circuit dismissed the appeal on September 6.

## Now What?

While a party to the Texas litigation could still appeal Judge Mazzant’s ruling, that seems unlikely. For now, the 2004 overtime regulations remain in place, and salaried employees who earn at least \$455 per week (\$23,660 annually) and satisfy one of the EAP duties tests may continue to be classified as exempt under the FLSA.

**Comment.** A number of state and local laws have higher salary thresholds for overtime exemptions than the federal level, and some have more restrictive duties tests. Employers should continue to look at both federal and state/local laws when evaluating exempt status, and ensure compliance with all applicable requirements.

The DOL is expected to update the white-collar regulations, and has already begun the process. In July, it issued a [Request for Information](#) (RFI) to gather information to aid in formulating a proposal. Among other things, the RFI asked for public comment on an appropriate salary level for the EAP exemption threshold and whether the duties tests should be changed. The comment period ends September 25.

**Comment.** If the DOL proposes an increase in the minimum salary level, many expect the threshold would be significantly lower than the \$913 per week (\$47,476 annually) in the 2016 rule, perhaps in the low- to mid-\$30,000 range. During his confirmation hearing, Secretary Alexander Acosta recognized that the salary threshold had not been adjusted in more than a decade, and signaled that he would be open to increasing it to somewhere around \$33,000 based on inflation.

## In Closing

Employers will want to monitor future developments closely, as they make sure employees classified as exempt continue to meet the minimum salary level and relevant job duties tests under applicable federal, state and local laws.

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