

DOL Appeals Ruling Invalidating Overtime Rule

On August 31, a Texas federal judge invalidated the Obama administration’s overtime rule that would have more than doubled the minimum salary threshold for so-called “white-collar” exemptions under the Fair Labor Standards Act. On October 30, the DOL filed a notice to appeal that decision. Once the appeal is docketed, the government will ask the U.S. Court of Appeals for the 5th Circuit to hold the appeal in abeyance pending the DOL’s further rulemaking. Employers should continue to monitor future developments closely.

Background

In 2016, the Obama administration unveiled a final rule that was primed to make millions of so-called “white-collar” workers eligible for overtime pay by more than doubling the minimum salary threshold for the Fair Labor Standards Act’s executive, administrative and professional (EAP) exemptions. The rule was slated to take effect on December 1, 2016. (See our [May 18, 2016 FYI Alert](#).)

In response to lawsuits filed by 21 states and a coalition of more than 55 business groups in Texas federal court, District Judge Amos Mazzant issued a preliminary injunction that put the rule on hold before it could take effect. (See our [November 23, 2016 FYI Alert](#).) The Obama administration appealed the ruling to the U.S. Court of Appeals for the 5th Circuit. (See our [December 9, 2016 FYI Alert](#).)

On August 31, 2017, Judge Mazzant granted the business groups’ summary judgment motion, invalidating the final rule. Among other things, his [ruling](#) held that the DOL did not have the authority to use a salary level test that effectively eliminates the need to consider whether employees perform *bona fide* EAP duties. The court said that it was not assessing the “general lawfulness of the salary-level test,” but this rule went too far. In light of that, the DOL withdrew its earlier appeal as moot. (See our [September 22, 2017 For Your Information](#).)



By then, the DOL had already begun the process of updating the white-collar regulations. Last July, it issued a [Request for Information](#) (RFI) to aid it in formulating a proposal to replace the Obama rule that the court struck

down. Among other things, the RFI asked for public comment on an appropriate salary threshold for an EAP exemption and whether the duties tests should be changed. The DOL is currently reviewing public input.

DOL Files Notice of Appeal

On October 30, the DOL filed a notice to appeal Judge Mazzant's August 31 decision that held the Obama administration's overtime rule was invalid. In prior court filings, the Trump administration made clear that it would not defend that rule, but indicated that it would defend the DOL's right to set a minimum salary threshold for an EAP exemption. At the same time, the DOL [announced](#) that it would ask the 5th Circuit to hold the appeal in abeyance while it "undertakes further rulemaking to determine what the salary level should be."

Comment. These procedural maneuvers seem designed to keep the DOL's legal options open while the agency crafts a new overtime rule that takes into account both salaries and job duties. If the 5th Circuit puts the appeal on hold now, the DOL is expected to ask the court to dismiss it as moot once a new overtime rule is issued.

In Closing

Employers will want to monitor future legal and rulemaking developments closely, and make sure that 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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