

Labor and Employment

November 23, 2016

AALRR Alert



Federal Court in Texas Halts Implementation of New Federal Overtime Rule

Jonathan Judge
Cerritos
562.653.3200
jjudge@aalrr.com

Scott K. Dauscher
Cerritos
562.653.3200
sdauscher@aalrr.com

Amber M. Solano
Cerritos
562-653-3200
asolano@aalrr.com

On November 22, 2016, a federal court in the Eastern District of Texas halted implementation of the Department of Labor's ("DOL") rule that amended the salary basis test for overtime exemptions in the Fair Labor Standards Act ("FLSA") that was scheduled to take effect December 1, 2016. *Nevada v. DOL*, E.D. Tex., No. 4:16-cv-00731 (11/22/16). The Court granted a preliminary injunction, which temporarily delays the DOL's rule from taking effect nationwide.

The DOL rule would have required employers to pay executive, administrative, and professional (so-called "white collar") exempt employees at least \$47,476 per year to be exempt from overtime. Until the Court takes further action, the federal salary basis will remain at its current level of \$23,660.

The Department of Labor published its final rule regarding the salary basis test in May of this year. Shortly thereafter, 21 states sued the DOL arguing that the DOL exceeded its authority in setting a salary threshold that more than doubled previous levels. The U.S. Chamber

of Commerce and other business organizations also filed a separate lawsuit which was consolidated with the *Nevada v. DOL* case. On Tuesday, the Court in Texas ruled that the DOL's dramatic increase to the salary basis threshold created "essentially a de facto salary-only test," which exceeded the authority granted to the DOL to interpret the FLSA.

The Court found that the higher salary threshold effectively eliminate many employees from exempt status who conduct exempt duties, but fail to qualify solely due to the salary earned.

Also up for review and determination by the Court, is whether the DOL overstepped its authority in creating an automatic increase in the salary basis test every three years. The first increase was set to take effect on January 1, 2020.

What happens next depends on several factors. The Court's preliminary injunction stops the DOL rule from taking effect until the Court makes a final decision on the merits of the validity of the DOL's

rule. The Court explained in its decision, "A preliminary injunction preserves the status quo while the court determines the department's authority to make the final rule as well as the final rule's validity."

In the meantime, the DOL is considering its legal options, which may include appealing the court decision. The DOL stated:

We strongly disagree with the decision by the court, which has the effect of delaying a fair day's pay for a long day's work for millions of hardworking Americans. The department's overtime rule is the result of a comprehensive, inclusive rulemaking process, and we remain confident in the legality of all aspects of the rule.

If the DOL does not appeal the Court's preliminary injunction,

--> "...the Court in Texas ruled that the DOL's dramatic increase to the salary basis threshold created 'essentially a de facto salary-only test.'

the parties will litigate whether a permanent injunction should be issued regarding the DOL rule. It is unknown how long it will take the Court to issue a decision on the permanent injunction. Also factoring into the equation will be what a President-elect Donald J. Trump-led DOL would be inclined to do, with the possibility that the DOL will withdraw the current rule and propose a new rule.

For employers in California, the salary basis test under California law currently stands at \$41,600, and is unaffected by the federal court ruling. The salary basis test for exempt employees in California will increase to \$43,680 on January 1, 2017, when the California minimum wage increases to \$10.50 per hour. It is important to remember that exempt employees must also satisfy a separate duties test to qualify as exempt, under both federal and California law.

What this means for employers

Many employers already took steps to comply with the DOL rule. Efforts to delay such implementation at the last moment may be problematic if increases in pay or changes in status have already been communicated to employees. Other employers who have not prepared to adjust to the new requirements may gain from their delay. However, as much uncertainty lies with the final determination on the status of the salary basis test, employers will want to monitor the latest developments on the salary

basis issue, and should consult with their employment counsel regarding their options going forward. If you have questions regarding the status of exempt employees and implementation of changes to compensation, please contact one of the authors.