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New DOL ‘White Collar’ Overtime Rule Remains on Indefinite Hold

Labor and Employment Legal Update

In November 2016, we reported that a federal judge in Texas issued a nationwide preliminary injunction against the U.S. Department of Labor’s (DOL) new overtime rule. Accordingly, the rule — which would have increased the minimum salary threshold for satisfying “white collar” exemptions to \$47,476 per year — has never taken effect.

An August 31 ruling from that same federal judge has now put the DOL’s rule on hold indefinitely. Granting summary judgment to a coalition of states and businesses, the court found that the DOL overstepped its authority by setting the salary threshold too high.

According to the court, Congress intended for white collar exemptions to focus primarily on a worker’s duties. At \$47,476 per year, the minimum salary threshold would exclude significant numbers of individuals who work in a bona fide executive, administrative or professional capacity. As such, the higher threshold effectively rendered the duties test meaningless in contravention of Congressional intent, according to the court.

Currently, the previous minimum salary threshold of \$23,660 remains in place. And, to be sure, the DOL is free to propose a more modest increase in the minimum salary threshold. It remains to be seen what such an increase would be and whether it would stand up to subsequent legal challenge.

What employers need to know now:

- **Expect the new DOL “White Collar” overtime rule to remain on hold indefinitely.** This ruling could be appealed to the Fifth Circuit Court of Appeals, which could take many months or even years to resolve.
- **At this point, employers do not need to increase salaries to comply with the new DOL “White Collar” overtime rules under the FLSA.**
- **Watch the DOL for withdrawal or new rulemaking.** Given the current administration, it is plausible that the DOL will withdraw this rule passed during the Obama era. Alternatively, as stated above, the DOL may propose a more modest increase in the

minimum salary threshold. Employers can choose to participate in the [DOL's current public request for information](#).

- **Watch Congress.** As reported previously, President Trump endorsed the concept of a FLSA exemption for small business. Such reform may impact the minimum salary threshold level.
- **Be ready for change.** The various factors at play mean one thing: anything is possible. To react quickly to new rules or legislation, companies should have an understanding of their workforce classification structure and how an increase in the salary threshold could drive labor costs. Employers are advised to consult with legal counsel about the practical and legal implications.