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'Unlawful' Overtime Rule Temporarily Blocked

By Kate McGovern Tornone, Editor

A federal district court temporarily blocked the U.S. Department of Labor's (DOL) overtime rule November 22, just days before it was scheduled to take effect. The judge who issued the order called the regulation "unlawful" and said such actions should be left to Congress.

At the request of 21 states, the U.S. District Court for the Eastern District of Texas granted an emergency injunction request, halting the regulations that would have required employers to pay overtime to anyone earning less than \$913 per week (which amounts to \$47,476 annually) beginning December 1.

Other DOL initiatives have suffered a similar fate in recent weeks. The same court temporarily enjoined the department's "blacklisting rule" last month. And just days ago, another court in the state issued a permanent injunction against DOL's "persuader rule."

Emergency Injunction Granted

The plaintiffs alleged in a lawsuit that DOL had overstepped its authority and they requested an emergency injunction, arguing that the public interest necessitated a nationwide preliminary injunction.

Judge Amos Louis Mazzant III, who was nominated to his position by President Obama, agreed. He said it is clear that Congress intended the Fair Labor Standards Act's (FLSA's) white-collar exemptions to apply to employees doing actual executive, administration and professional duties—and not just those who meet a salary requirement.

"With the Final Rule, the Department exceeds its delegated authority and ignores Congress's intent by raising the minimum salary level such that it supplants the duties test. Consequently, the Final Rule ... is unlawful," Mazzant wrote. "If Congress intended the salary requirement to supplant the duties test, then Congress, and not the Department, should make that change."

Because he determined the final rule to be unlawful, Mazzant said it was unnecessary to separately address the salary threshold's automatic increases, which would have upped the threshold every 3 years. It was expected to exceed \$51,000 at the first update in 2020. "Because the Final Rule is unlawful, the Court concludes the Department also lacks the authority to implement the automatic updating mechanism," he said.



Moreover, the public interest is best served by an injunction, Mazzant continued. If the rule is ultimately determined to be invalid, an injunction prevents the public from being harmed by its enforcement. On the other hand, if it is deemed valid, then the injunction merely delays implementation, he said.

“Due to the approaching effective date of the Final Rule, the Court’s ability to render a meaningful decision on the merits is in jeopardy,” Mazzant wrote. “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” (State of Nevada v. United States Department of Labor, No. 4:16-cv-00731 (E.D. Texas, Nov. 22, 2016)).

Reactions

The Society for Human Resource Management (SHRM) said it applauded the order. “This decision provides an important opportunity to revisit the rule and create one that better reflects the modern realities of today’s workplace and better meets the needs of both employers and employees,” SHRM said in a statement.

Sen. Lamar Alexander (R-TN), who had introduced a bill that would have scaled back the rules, echoed that sentiment and said the delay will give the Trump administration time to revise the rule.

DOL, however, said it strongly disagreed with the decision. “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,” it said in a statement.

Employer Plans

For now, the overtime rule is suspended. Unless a court takes further action during the next week, employers do not have to comply with the rule come December 1, according to Michelle Lee Flores, a member of Cozen O’Connor and a contributor to the California Employment Law Letter.

DOL said it is currently considering its legal options and Flores said it could be days or weeks before the court takes further action. Among other possibilities, it could issue a permanent injunction.

If employers haven’t implemented any changes in anticipation of the rules, they’re safe to maintain the status quo for now, Flores said.

And if they have adopted changes, they’ll have to decide whether to roll them back. If an employer, for example, gave modest salary bumps to employees close to the threshold, it may make sense to leave those in place, especially because the injunction is only temporary. If the change was substantial, an employer would have to weigh the risks of reducing the employee’s salary back to the original level.



What employers must not do, however, is attempt to recoup any extra compensation paid in anticipation of the rules. “You wouldn’t want to make employees pay anything back,” Flores explained. Any salary reductions should be done with plenty of notice and explanation to employees, she said, and should only be done going forward—never retroactively.

If you have additional questions, please contact HR@eESIpeo.com or 888.465.1711.