New Department of Labor Overtime Regulations Put on Hold

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New Department of Labor (DOL) overtime regulations under the Fair Labor Standards Act (FLSA) were scheduled to take effect on December 1, 2016. However, a Texas federal court just issued a nationwide injunction, placing the entire rule on hold (*Nevada v. Department of Labor*, opinion here).

What would the new rule have done?

Employers generally must pay employees "time-and-a-half" (or 150% of their regular rate of pay) for hours over 40 worked in a workweek. There are numerous exceptions to this rule and some employees are "exempt" from the overtime pay requirement. The most common exemptions that employers use are the "white collar" exemptions

To qualify for the white collar exemptions, an employee's primary duties must entail work that meets the definition of the administrative, executive, or learned professional exemption. Additionally, the employee must be paid on a salary basis (as opposed to hourly rate), and be paid a salary that meets a certain minimum. The new rule would have raised that minimum salary from $455 per week ($23,660/yr) to $913 per week ($47,476/yr).

For additional changes and a more detailed explanation, see the previous McQuaide Blasko whitepaper, New Department of Labor Overtime Regulations Limiting Exemptions.

What did the Court actually do?

The Court preliminarily concluded that the new overtime rule was unlawful and therefore entered a nationwide injunction. Issues regarding the lawfulness of agency rules and judicial deference to those rules are complicated. The gist of the decision is that when Congress passed the FLSA it intended to exempt employees from the overtime pay requirements based on the

administrative, executive, or learned professional nature of their primary work duties. The Court concluded that "the Department exceeds its delegated authority and ignores Congress's intent by raising the minimum salary level such that it supplants the duties test."

The Court issued a nationwide preliminary injunction, so it puts the rule on hold everywhere (including here in Pennsylvania). *For now*, it means that employers do not need to comply with the new rule.

Where do we go from here?

Is this the end? Absolutely not. This is just a preliminary injunction, and not a final determination. DOL has not yet announced whether it will appeal the decision. It is likely that the litigation will continue and possible that the injunction will be lifted at some point in the future. Another unknown is how, if at all, the new presidential administration will handle the litigation; or, whether the new administration will seek to amend or rescind the rule.

Of course, employers may voluntarily comply with the new rule and proceed with the plans they already had in place. Rescinding anticipated pay raises or overtime pay eligibility could be a morale nightmare for employers. Some employers may also be contractually obligated to follow through on these promises, or bound to comply if employees reasonably relied on such promises to their own detriment. At the very least, employers should still have a plan in place for compliance with the new rule in case the injunction is lifted.

McQuaide Blasko's Labor and Employment Law Practice Group is prepared to help. Please contact us at 814.238.4926 if you have questions about these changes, or any other labor and employment law needs.

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