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Judge Overturns New Overtime Pay Law – What Comes Next?

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Ken Berry • Dec. 15, 2016



In a stunning eleventh-hour decision, a federal judge in Texas has blocked the new “final overtime rule” set to take effect on December 1, 2016. Judge Amos Mazzant held that the rule, promulgated by the Department of Labor (DOL), is in violation of federal law. The legal action was brought by 21 states and several prominent business groups, including the National Retail Federation and the U.S. Chamber of Commerce.

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Briefly stated, employees must be paid time-and-a-half their regular pay rate for overtime worked above 40 hours a week, unless they are specifically exempted from this requirement. If employers don't adhere to the rules, they may be liable for payroll taxes, plus the amounts due for overtime.

Existing DOL regulations generally require each of the following three tests to be met for employees to be exempt and therefore ineligible for overtime pay.

1. Salary basis test. The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed.

2. Salary level test: The amount of salary paid must meet a minimum specified amount.

3. Duties test: The employee's job duties must primarily involve executive, administrative or professional duties as defined by the DOL regulations.

Highly-compensated employees earning an amount above an annual threshold are exempt regardless of whether or not they meet the duties test.

The salary thresholds had not been raised in more than a decade. The final overtime rule would have nearly doubled the salary threshold from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476 per year), while increasing the exemption amount for highly-compensated employees from \$100,000 to \$134,000. It also would have established the means to update these salary thresholds every three years, beginning in 2020.

But Mazzant said that the DOL can't use only salary levels to determine if workers are eligible for overtime. So now it's back to the drawing board.

Although employers may view this as a reprieve, they've probably done a lot of the grunt work to be fully compliant by December 1. For instance, worker schedules may have been revised or salaries adjusted to take the final overtime rule into account. Or the changes might have led to a restructuring of the staff and their respective duties. The new decision doesn't mean employers should automatically junk their revised policies.

In addition, consider the practical aspects. If worker salaries have been increased so they can continue to qualify for exemptions, taking back the raises could crush morale and dampen productivity, especially around the holidays.

The best approach is to revisit the issue. Take as much time as is needed to properly assess whether policy changes should be retained or tweaked to accommodate reinstatement of the rule or a comparable update by the DOL. Do what's best for your company – not necessarily what is best for everyone else.

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