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about the new Fair Labor Standards Act (FLSA) overtime regulations or "Final Rule" and the latest court ruling blocking the Final Rule from taking effect.

Aldor Delp • Feb. 17, 2017



As a trusted advisor to your clients, you've probably gotten your share of questions about the new Fair Labor Standards Act (FLSA) overtime regulations or "Final Rule" and the latest court ruling blocking the Final Rule from taking effect. In November, a U.S. District Court in Texas issued a nationwide preliminary injunction blocking the

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The future of the Final Rule is uncertain. In the meantime, here are four key questions you may receive and how you can respond to them:

- **What should I do about the payroll changes I made ahead of the anticipated rule change?** Many of your clients likely spent months preparing for the FLSA changes, identifying workers affected by the final regulations, determining whether to increase their salaries to comply or reclassify them as non-exempt employees, and communicating those changes to their employees. If an employer already notified employees of a salary change, it may be too difficult to reverse that decision. As your client's counselor, consider advising your client to go ahead with the initial plans and stay the course, especially if they already authorized the change in payroll.
- **Could the DOL retroactively apply the rule?** Yes, the court may side with the DOL and the proposed regulations could be reinstated retroactively to the original effective date of December 1, 2016. For that reason, your clients who decide to maintain the exempt status of impacted exempt employees without raising salaries to meet the Final Rule's thresholds should consider directing these employees to track their time. In the event the final rule is later upheld and overtime becomes due retroactively, this would help ensure that clients will have an accurate record of employee hours worked.
- **If the rule is not upheld, do FLSA classifications still apply?** Whether or not the rule is upheld, employers remain subject to existing FLSA requirements that dictate proper job classification and payment methods. While the fate of the Final Rule is uncertain, employers should continue to evaluate the exempt status of their employees by carefully reviewing job duties and descriptions to ensure that employees are properly classified in accordance with FLSA requirements. Take this opportunity to make sure employees' duties match their job descriptions.
- **How should I talk to my employees about these changes?** In deciding how to proceed, advise your clients to consult with internal or external legal counsel and

other experts to discuss options available before making and communicating

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possible outcomes.

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Payroll

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