

## Federal Court Blocks DOL Changes to Overtime Regulation

The media reports are accurate: A federal judge in Texas has blocked implementation of new Department of Labor regulations that would have significantly increased the salary level that can determine whether workers engaged in a “bona fide executive, administrative or professional capacity” (i.e. the “white-collar exemptions”) are eligible for or exempt from overtime compensation.

The regulations had been scheduled to go into effect next week, on December 1.

Under current DOL regulations, employees who perform supervisory, professional, or high-level administrative functions and who are paid a salary of at least \$455.00 per week can be exempt from overtime compensation. The DOL regulations would have more than doubled the salary level for exempt status to \$913.00 per week (\$47,476.00 per year).

Under the new regulations which would have gone into effect on December 1, most workers who are paid less than \$47,476.00 per year would no longer have been exempt; they would have been eligible for overtime compensation starting December 1; undoubtedly imposing a dramatic financial impact upon all private and public employers. Employers who wanted to reduce liability for overtime compensation to such employees would have had to increase those employees' compensation to meet the new \$47,476.00 threshold, or strictly monitor those employees' hours to keep them from working more than 40 hours in any given week.

The plaintiffs in the Texas case (a variety of business organizations and state governments, including Arizona) sued the DOL, arguing that the new regulations were invalid. In response to an early-filed motion for preliminary injunction, the judge concluded that the new regulations likely did exceed the DOL's statutory authority, and that it was appropriate to block their implementation, at least temporarily, pending further developments in the litigation or a trial on its merits. The judge's order blocking the regulations will remain in effect until further notice.

The DOL has the right to appeal the judge's order. But as a practical matter, the appellate court might not be in position to take action on such an appeal until after the presidential transition on January 20. Under those circumstances, the incoming Trump administration will have much to say on whether the new regulations ever go into effect.




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For the time being, the existing DOL regulations concerning the “white-collar exemptions” remain in effect. As a reminder: the existing “white-collar exemption” requires three criteria. First, the employee must be paid on a salary basis. Second, the employee must be paid at least the minimum salary level of \$455.00 per week (\$23,660.00 annually). Third, the employee’s “primary duties” must consist of actual executive, administrative, or professional functions. While the Texas case remains pending and the preliminary injunction remains in place, please ensure your continued compliance with the existing regulations, including meeting all three of these existing criteria for the “white-collar exemption” with respect to any employee whom you classify as “exempt” from overtime. Remember that improper classification may result in DOL audits and retroactive calculation of unpaid overtime to putatively misclassified employees.

We will continue to monitor the Texas case for further legal developments. We also will continue to watch for any further regulatory activity by the DOL. In the meantime, employers should remain mindful of the fact that this federal court order does not impact any other DOL regulations as concerns the classification of other subsets of employees, whether paid hourly, by commission or salary. We recommend employers with specific questions about how this court action might affect their own operations should contact any of the members of Gallagher & Kennedy’s Employment & Labor Law practice.