



Judge invalidates President Obama's overtime rule

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On Thursday, August 31, 2017, a Texas federal district court, Judge Amos Mazzant, invalidated the Obama administration's overtime rule, which would have vastly expanded the Fair Labor Standards Act (FLSA) overtime protections for white collar workers.

FLSA exemptions

FLSA requires that employees be paid not less than the federally mandated minimum wage, and further requires that employees be paid an overtime premium for all time worked in excess of 40 hours in a workweek. However, FLSA exempts from the minimum wage and overtime rules any employees who are employed in a "bona fide executive, administrative, or professional" capacity, commonly referred to as the "white collar exemptions." To qualify for the white collar exemptions under Department of Labor (DOL) Regulations, an employee must: (1) perform bona-fide executive, administrative, or professional duties, as defined in the Regulations; (2) be paid on a salary basis; and (3) be paid a salary not less than the prescribed minimum (currently \$23,660 per year).

New Department of Labor overtime rule and subsequent legal challenges

Under the Obama administration, the DOL issued regulations that would have drastically increased the minimum salary threshold for the white collar exemptions, from \$23,660 to \$47,476 per year. In response, 21 states (the States) filed suit against the DOL, requesting emergency injunctive relief enjoining the DOL from implementing the new regulations, which were scheduled to become effective on December 1, 2016. In addition to the suit by the States, the Plano Chamber of Commerce and more than 55 other business groups (Business Groups) also filed suit challenging the rule. The Business Groups moved for expedited summary judgment, seeking to have the rule invalidated. The judge subsequently consolidated the two cases.

On November 22, 2016, Judge Mazzant preliminarily enjoined the DOL from implementing the rule, preventing it from going into effect. Judge Mazzant's decision not only struck down the increased salary requirement adopted by the Obama administration; the decision also suggested that the DOL did not have authority to issue regulations that classified an employee as non-exempt on the basis of salary alone, without regard to the duties performed by the employee. Thus, Judge Mazzant's

opinion raised doubt about whether the white collar exemption could include a salary level requirement at all. This ruling was somewhat unexpected, since the salary level requirement has been in effect since 1949 and has not been seriously challenged for many years.

On August 31, 2017, Judge Mazzant, granted summary judgment in favor of the Business Groups and the States, invalidating the DOL's overtime rule in its entirety. Judge Mazzant tried to walk a tight-rope between his prior decision and controlling precedent. He admitted that his prior decision may have created confusion, but claimed that his new decision would "clarify any confusion" regarding the general lawfulness of a salary-level test. Judge Mazzant again held that the DOL did not have authority to "use a salary-level test that will effectively eliminate the duties test," nor could the DOL "categorically exclude those who perform 'bona fide executive, administrative, or professional capacity' duties based on salary level alone." Judge Mazzant reasoned that because the significant increase in the salary threshold would exclude so many formerly exempt employees based on salary alone, such an interpretation was contrary to both FLSA and congressional intent.

However, Judge Mazzant also acknowledged that he was bound by Fifth Circuit precedent, which squarely holds that the DOL has the authority to implement a minimum salary requirement. Judge Mazzant attempted to harmonize these conflicting concepts by stating that he was only addressing the lawfulness of the salary level test adopted by the Obama administration, and nothing more.

What to expect next

On June 30, 2017, the DOL signaled in its Fifth Circuit Appeal of the preliminary injunction ruling that it did not intend to move forward implementing the Obama administration's overtime rule as initially adopted. However, the DOL did ask the Fifth Circuit to affirm its continued authority to include a minimum salary level as part of the test for the white collar exemptions.

In a related development, on July 25, 2017, the DOL published a request for public comment. The DOL sought comment on 11 questions regarding the white collar exemptions, including whether it would be desirable to eliminate the minimum salary requirement in favor of a test that focused exclusively on the duties performed by the employee. It is anticipated that both employer groups and employee groups will generally oppose such an approach.

To date, the DOL has received more than 135,000 comments, and the public comment period is set to expire on September 25, 2017. The DOL has publicly stated that it will not issue any proposed regulations until the Fifth Circuit decides whether the DOL has the authority to set a salary threshold.

The Fifth Circuit has yet to rule on the DOL's appeal of the preliminary injunction. However, it is unlikely that the Fifth Circuit will invalidate the DOL's ability to set a minimum salary level for the white collar exemptions, since the court has previously upheld the DOL's use of such a requirement.

Once the Fifth Circuit resolves the pending appeal, it is probable that the DOL will publish draft regulations with proposed amendments to the white collar exemptions. After the period for public comment has expired, the DOL will probably issue final regulations, and those regulations are likely to modestly raise the salary threshold. Secretary of Labor Alexander Acosta has publicly stated that he would be open to increasing the minimum salary level to "something around \$33,000," so it would not be surprising if the DOL ultimately adopts a salary level in that range. In the meantime, the minimum federal salary level for exempt employees remains at \$23,660 per year.

Employers should also remember that they are required to comply with any applicable state and local wage-and-hour laws, and that some states, such as California and New York, impose higher minimum salary levels.

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