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## The Fifth Circuit could determine whether Obama's Overtime Rule may still form the basis for private suits

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### FLSA overview and previous litigation over the Obama DOL Overtime Rule

The Fair Labor Standards Act (FLSA) requires that employees be paid equal to or more 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 qualify for one of the “white collar exemptions.” To qualify for the white collar exemptions, an employee must: (1) perform bona-fide executive, administrative or professional duties, as defined in the Department of Labor (“DOL”) 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).

As reported in previous alerts (see [November 2017](#), [September 2017](#)), the Obama administration DOL adopted regulations which would have significantly increased the minimum salary threshold for the white collar exemptions, from \$23,660 to \$47,476 per year. Ultimately, Judge Mazzant, in a Texas federal district court, enjoined the DOL from implementing the Obama Overtime Rule. Judge Mazzant’s Order was hardly a model of clarity. The Order stated vaguely that “the Final Rule. . . is enjoined,” and further stated that the DOL was “enjoined from implementing and enforcing” the regulations. The Order did not state the regulations were a nullity. The DOL appealed Judge Mazzant’s ruling.

While the appeal was pending, in August 2017, Judge Mazzant granted summary judgment against the DOL, invalidating the Obama Overtime Rule in its entirety. In October 2017, the Department of Justice, on behalf of the DOL, appealed Judge Mazzant’s summary judgment ruling to the Fifth Circuit but at the same time, the DOL issued a press release stating that it would request that the Fifth Circuit stay the appeal to engage in rulemaking to determine the correct salary threshold. The Fifth Circuit granted the DOL’s request to stay the appeal. At this point, it appeared that the Obama administration overtime regulations were effectively dead.

## **Plaintiff, Carmen Alvarez, files a suit alleging FLSA violations based upon the enjoined Obama Overtime Rule in New Jersey**

However, in June 2017, plaintiff Carmen Alvarez filed a proposed class action lawsuit against Chipotle Mexican Grill, alleging that she and other exempt employees had been misclassified because they were paid below the \$47,476 salary threshold arguably established by the Obama Overtime Rule. The plaintiff argued that while Judge Mazzant's preliminary injunction prevented the DOL from implementing and enforcing the Obama Overtime Rule, his order did **not** stay the effective date of the Obama Overtime Rule or prevent unrelated private parties from suing to enforce the Rule in a different forum.

In August 2017, Chipotle requested that Judge Mazzant hold the plaintiff and her attorneys in contempt of court for disregarding Judge Mazzant's injunction. In response, the plaintiff argued that Judge Mazzant's court, in Texas, lacked personal jurisdiction over her, and was the improper venue for a contempt proceeding against the plaintiff who had filed her unrelated case in New Jersey. The plaintiff again argued that Judge Mazzant's injunction did not prevent them from filing a suit in New Jersey based on the Obama Overtime Rule.

Judge Mazzant, when ruling on the contempt motion, stated that the plaintiff and her attorneys had "summarily dismissed" the injunction's application to her case despite his order's "clear language." He also ruled that because the DOL had "adequately represented" the plaintiff's interests in the original case, she was effectively "in privity" with the DOL and bound by the injunction. Judge Mazzant held that "[s]uch disobedience mandates coercive action to ensure compliance with the Court's Order" and held plaintiff and her attorneys in contempt for recklessly disregarding the injunction.

Plaintiff and her attorneys appealed Judge Mazzant's contempt order to the Fifth Circuit. Plaintiff again argued that Judge Mazzant had no jurisdiction to issue a contempt order, and Judge Mazzant could not hold the plaintiff and her attorneys in contempt because "federal courts do not have free-wheeling authority to bind people with injunctions." Plaintiff again stated she was not a party to the original case in which the injunction was issued, and that therefore the injunction did not bar her from filing the suit. She also reiterated it was not clear that injunction itself actually prevented private suits from enforcing the Obama Overtime Rule, or that it even stopped the Obama Overtime Rule from going into effect. In response to the appeal, Chipotle and several U.S. business groups filed briefs arguing that (1) the plaintiff was subject to the injunction and could be held in contempt for violating the clear injunction; and (2) the Fifth Circuit should not use the contempt appeal as an opportunity to re-litigate the merits or scope of injunction, which they argued enjoined all actions based upon the Obama Overtime Rule on a nationwide basis. The Fifth Circuit has yet to rule on the appeal.

### **What to expect next**

The plaintiff's appeal raises a number of significant issues, and Fifth Circuit's ultimate decision may have significant ramifications. First, the appeal raises the issue of whether a single federal district judge should issue a "nationwide injunction." Justice Thomas has recently expressed skepticism about the practice, and the Supreme Court will ultimately have to rule on the issue. Second, the Fifth Circuit has to decide, assuming the nationwide injunction was proper, whether it was proper for Judge Mazzant to find plaintiff and her attorneys, who were not before his court, in contempt.

Finally, the Fifth Circuit may decide whether Judge Mazzant's injunction prevented the Obama regulations from going into effect for all purposes, or merely enjoined the DOL from enforcing the regulations. Based on the briefing, the authors believe it is likely that the courts will ultimately rule that the regulations never went into effect at all, and that the plaintiff's FLSA claims therefore lack merit. It is less clear how the Fifth Circuit will rule on the jurisdictional and other procedural issues.

If the Fifth Circuit holds that injunction does not prevent suits based upon violation of the Obama Overtime Rule, then employers can expect to see numerous suits filed following the plaintiff's lead in the Chipotle case. Additionally, even if the Fifth Circuit simply reverses the contempt order—a strong deterrent to filing cases based upon the Obama Overtime Rule—it could be enough to spur additional lawsuits in other forums, regardless of the ultimate legal merits of such a case. A ruling upholding the contempt order, in all likelihood, would end any further attempts to enforce the Obama Overtime Rule.

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