

News & Alerts

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Employers Could Still Have Work To Do Despite the Recent Injunction of the DOL's New Overtime Rule

A Texas federal judge recently issued a nationwide preliminary injunction against the implementation and enforcement of regulations proposed by the United States Department of Labor (DOL) to update exemptions from the Fair Labor Standards Act's overtime requirements for executive, administrative, or professional employees (the EAP exemptions). The DOL's new rule, which would have doubled the salary level for employees to qualify for the basic EAP exemptions, was scheduled to become effective on December 1, 2016. Employers across the country have been busy preparing for the changes.

In the short term, the Texas federal court's order means that employers who were planning to make changes to their employee classifications or compensation in order to comply with the DOL's new rule can take a breath. Pending further order of court, the new rule cannot be implemented or enforced by the DOL. The existing EAP exemption regulations remain in effect.

The ultimate fate of the DOL's proposed rule remains uncertain, given the potential for any of the following:

- an appeal by the DOL under the Obama Administration;
- subsequent decisions by the Texas federal court at a later stage of the case (the current injunction is only preliminary); or
- actions concerning the Texas federal case or the rule itself that could be taken by the DOL under the Trump Administration.

But what actions should employers take now? Is there any additional work to be done?

Remember the duties tests for EAP exemptions have not changed and still must be met.

The salary level test, which was at the center of the DOL's proposed rule and the Texas federal court's decision, is only one piece of the EAP exemption puzzle. Each of the EAP exemptions also has an associated job duties test that also must be met in order for an employee to be eligible. The DOL's proposed rule did not make changes to the duty requirements for any exemption, and the court's order does not alter the rule that employees must meet the duties test for their particular EAP exemption.

In getting ready for the anticipated rule change, many employers also reevaluated whether their employees met the duty requirements for an EAP exemption. If particular employees were found *not* to meet the duties test for an EAP exemption, employers should follow through with reclassifying such workers as non-exempt and pay appropriate overtime, despite the injunction of the DOL's proposed rule.

If, however, an employee meets the duties tests for an EAP exemption and is being paid a salary at or above the current threshold (\$455 per week, or \$23,660 annually), the employer does not need to make any change to the employee's classification or compensation at this time.

If an employer has already taken steps to comply with the proposed new rule (e.g., re-classifying as non-exempt an employee making less than the proposed new salary threshold of \$47,476 or raising an employee's salary to \$47,476 or above to maintain an exemption), such steps can be reversed and the existing rules followed. Of course, the employer will need to make a business judgment call regarding how such reversals would affect employee morale.

The Texas federal court's decision surely comes as welcome news to many employers, but there still is work to be done if employees do not meet the duties test for their EAP exemption and are not exempt even under the existing overtime rules.

Have questions about the injunction or actions you should take? Contact a member of the Hirschler Fleischer employment law practice group.

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