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A SIGH OF RELIEF FOR EMPLOYERS: FEDERAL JUDGE HALTS IMPLEMENTATION OF NEW OVERTIME REGULATIONS

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Employers across the country have been preparing to implement the new federal Department of Labor ("DOL") regulations, which call for a substantial increase in the base salary for all so-called "White Collar" exempt employees. This new regulation, scheduled to take effect on December 1, 2016, was challenged by a group of 21 states and 50 businesses as unconstitutional. With employers across the country anxiously awaiting good news from this lawsuit, that good news came on Tuesday, November 22, 2016, when United States District Judge Amoz Mazzant entered a preliminary injunction temporarily enjoining the regulation from taking effect on December 1, 2016.

By way of background, in May 2016, the DOL published a Final Rule, which would increase the salary threshold for "White Collar" exemptions under the Fair Labor Standards Act ("FLSA") from \$455 per week (\$23,660 annually) to \$913 per week (\$47,476 annually). It also mandated an increase in the salary required for an employee to be exempt under the "Highly Compensated Employee" exemption (from \$100,000 to \$134,004). With limited exceptions, this new regulation would force employers across the country to either increase the salaries of its exempt employees or re-classify them and begin paying them overtime for hours worked over 40 in a single workweek. In essence, the regulation effectively doubled the salary threshold for employers to exempt certain executive, administrative, professional, outside sales, and computer/software programmer employees from the overtime and minimum wage requirements of the FLSA. When implemented, the DOL projected that this new regulation would affect approximately 4.2 million workers nationwide, more than 100,000 in New Jersey alone, and would cost employers over \$1.8 billion.

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As we mentioned during our 8th Annual Employment Law Forum, 21 states collectively filed a lawsuit against the United States Department of Labor in September 2016, claiming that the Final Rule imposed a burden on state budgets and was thus unconstitutional. In addition, over 50 businesses and organizations also filed a lawsuit challenging the Final Rule. The United States District Court for the District of Texas consolidated the cases and recently entertained a request from the States that the Court issue a preliminary injunction that would enjoin the regulations from going into effect on December 1, 2016.

In order to prevail, the States had the burden to prove (1) a substantial likelihood of success on the merits; (2) a substantial threat that they would suffer irreparable harm if the injunction is not granted; (3) that the threatened injury outweighs any damage that the injunction might cause the DOL; and (4) that the injunction will not disserve the public interest.

In short, the States needed to convince Judge Mazzant that the DOL had overstepped its authority in issuing the above regulations. A federal agency, such as the DOL, is limited to issuing regulations that interpret and assist in the enforcement of statutes passed by Congress and signed into law by the President. Federal agencies, therefore, are limited and cannot implement regulations that supersede the boundaries of the statute or the authority granted to them by that statute. The States argued that the DOL did just that; it went beyond what Congress intended when it created the FLSA.

In analyzing the parties' arguments, the Court noted "[t]he precise question at issue here is: [w]hat constitutes an employee employed in an executive, administrative, or professional capacity?" In determining Congress's meaning of the undefined terms, the Court essentially looked to the plain meaning of the words and determined that Congress clearly intended the exemptions "to apply to employees doing actual executive, administrative, and professional duties." It further held that Congress defined the exemptions "with regard to duties, which does not include a minimum salary level."

Although the DOL argued that the exemption carries a "status and function" component, the Court found that there was no specific salary requirement and that Congress intended the exemption "to depend on an employee's duties rather than an employee's salary." The Court further found that Congress's intent was directly in conflict with the Final Rule because "the Final Rule states that "[w]hite collar employees subject to the salary level test earning less than \$913 per week will not qualify for the [executive, administrative or professional] exemption, and therefore, will be eligible for overtime, irrespective of their job duties and responsibilities." As a result, the Court found that the DOL exceeded its authority and ignored Congress's intent by raising the salary threshold, which effectively replaces the "duties test" of the FLSA. The Court further noted that the DOL's role is to carry out the intent of Congress, and if Congress had intended on replacing the "duties test" by increasing the salary requirement, then Congress was required to make that change.

In light of the above ruling, the Court also found that provision in the Final Rule providing for an automatic update of the salary threshold every three years was also unlawful because the DOL "lacks the authority to implement the automatic updating mechanism."

The Court noted its agreement with the States that the Final Rule would cause irreparable harm to States because they would be required to expend resources to comply with the Final Rule by increasing employees' wages and could not effectively recoup those monies if ultimately they are successful in the lawsuit. This injunction is intended to preserve the status quo during the pendency of the lawsuit. It is applicable to all employers across the country. In other words, no employer need comply with these new regulations at this time.

TAKE AWAY

This preliminary injunction is a sigh of relief for employers who were concerned about the drastic changes we discussed during our Employment Law Forum. For now, employers need not take any action on December 1 to re-classify employees or raise their salaries. Just remember, although this injunction will preserve the status quo, eventually there will be a hearing on the merits of the argument by the Court. Please stay tuned for further updates and feel free to contact us if you have any questions.