



September 2017

EMPLOYERS BREATHE SIGH OF RELIEF AS FEDERAL COURT PUTS AN END TO THE EXPANSION OF THE FLSA OVERTIME RULE

By: Emre M. Polat

On August 31, 2017, the U.S. District Court for the Eastern District of Texas held that the Department of Labor ("DOL") exceeded its authority in implementing a new rule that doubled the minimum salary requirements under the white-collar exemptions of the federal Fair Labor Standards Act ("FLSA").

While we have been covering this matter since the Final Rule was first introduced in May 2016, it may be beneficial to summarize the events that led to this decision, which put an end to the DOL's efforts to increase the minimum salary requirements.

- In May 2016, the DOL published a Final Rule, which essentially increased the salary threshold for "White Collar" exemptions under the FLSA from \$455 per week (\$23,660 annually) to \$913 per week (\$47,476 annually). The rule was to take effect on December 1, 2016 and, once implemented, was projected to affect the salaries of 4.2 million workers nationwide.
- In September 2016, 21 states and 50 businesses collectively filed a lawsuit against the DOL claiming that the new rule exceeded the authority of the DOL, imposed a burden on the state budgets, and was unconstitutional. The states and businesses also sought a preliminary injunction that would temporarily halt the rule from going into effect on December 1, 2016.
- On November 22, 2016, Judge Amos Mazzant granted the preliminary injunction halting the new rule from going into effect. In response, the DOL filed an appeal of the injunction to the Fifth Circuit.

EDITOR-IN-CHIEF

Kerri A. Wright
973.889.4327
kawright@pbnlaw.com

EMPLOYMENT LAW ATTORNEYS

Sal M. Anderton
Richard H. Bauch
David L. Disler
Janelle Edwards-Stewart
Marie-Laurence Fabian
Vito A. Gagliardi, Jr.
Emre M. Polat
Eliyahu S. Scheiman
Deborah H. Share
Kerri A. Wright

James H. Coleman, Jr.
Retired Justice, New Jersey
Supreme Court

Maurice J. Gallipoli
Retired Judge, Superior
Court of New Jersey

Alvin Weiss
Retired Judge, Superior
Court of New Jersey

STAY CONNECTED



[More on Us](#)



While the DOL's appeal of the preliminary injunction was still pending, the case moved forward and the states and businesses filed for summary judgement seeking a final decision by the Judge to invalidate the rule. In their motion, the states argued that the FLSA's overtime requirements violate the Constitution by regulating the states and coercing them to adopt wage policy choices that adversely affect state priorities, budgets, and services. The collective businesses argued that the rule increases the minimum salary threshold so high that it is no longer a plausible proxy for the job duties of an executive, administrative, or professional ("EAP") capacity employee. In other words, the high salary threshold effectively nullified the aspect of the test that requires an analysis of the job duties of the respective position. As a result, the collective businesses asserted that the Final Rule was inconsistent with the FLSA and departed from DOL regulations. In response, the DOL argued that the implementation of the Final Rule was within its delegated authority because Section 213(a)(1) of the FLSA explicitly grants authority to the DOL to "define and delimit" the terms "bona fide executive, administrative, or professional capacity."

After hearing arguments from both sides, Judge Mazzant rendered a decision on August 31, 2017. In his decision, Judge Mazzant noted that the significant increase in the minimum salary threshold "would essentially make an employee's duties, functions, or tasks irrelevant if the employee's salary falls below the new minimum salary level." He further noted that "entire categories of previously exempt employees who perform 'bona fide executive, administrative, or professional capacity' duties would now qualify for the EAP exemption based on salary alone" and that this "is not what Congress intended with the EAP exemption." Judge Mazzant also took issue with the fact that the DOL created a rule that "makes overtime status depend predominately on a minimum salary level, thereby supplanting an analysis of an employee's job duties." As a result, Judge Mazzant granted summary judgment to the states and businesses holding that the DOL exceeded its authority and that the rule was invalid.

This decision effectively ended the litigation. As a result, on September 5, 2017, the DOL withdrew its appeal of the preliminary injunction as that issue was now moot. As of now, the DOL's new rule has been nixed by the court, allowing employers to breathe a sigh of relief. The DOL is currently seeking comments from the public and interested parties regarding proposed revisions to the rule.

Takeaway for Employers

This case is favorable for employers as employers are not required to increase the minimum salary of their employees to meet the salary threshold for overtime exemption under the FLSA. However, it is important to note that the white-collar exemption and all other provisions of the FLSA remain unchanged. That is, all employees who are non-exempt employees must be paid overtime for all hours worked over 40 per week at a rate of 1.5 their hourly rate. If you have any questions as to whether an employee qualifies as an exempt employee under the FLSA, please contact us.

The Porzio Employment Law Monthly is a summary of recent developments in employment law. It provides employers with an overview of the various legal issues confronting them as well as practical tips for ensuring compliance with the law and sound business practices. This newsletter, however, should not be relied upon for legal advice in any particular matter.