

Update on Challenge to Overtime Rule

July 10, 2017

As **previously reported**, the Fifth Circuit Court of Appeals is currently reviewing a challenge to the recent Fair Labor Standards Act ("FLSA") overtime changes. Previously, a Texas district court **entered an injunction** preventing the Department of Labor ("DOL") from implementing new regulations regarding the determination of who is exempt for overtime purposes. On June 30, the DOL filed its reply brief with the Court of Appeals, stating that although it was no longer defending the overtime rule set to become effective on Dec. 1, 2016, it believed the district court erred in concluding that the DOL had no authority to set white-collar salary limitations. Therefore, the DOL requested that the court rule in its favor on that issue and reject the district court's issuance of the injunction, which, it argued, "would call into question any salary-level test adopted by the [DOL]."

In a related development, on June 27 the DOL **announced the issuance** of a proposed Request for Information ("RFI") related to possible new overtime rules to the Office of Management and Budget for its review. On its website, the DOL explained that "[w]hen published, the RFI offers the opportunity for the public to comment."

Despite the DOL's recent filing, employers should carefully review the duties being performed by those employees treated as exempt.

We will continue to monitor changes related to the overtime rules and will update you with any important developments.

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