

THOUGHT LEADERSHIP

LEGAL UPDATES

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Service

Labor & Employment

Professionals

JOSEF S. GLYNIAS

ST. LOUIS:

314.345.6208

JOE.GLYNIAS@

HUSCHBLACKWELL.COM

HAYLEY E. HANSON

KANSAS CITY:

816.983.8377

HAYLEY.HANSON@

HUSCHBLACKWELL.COM

SCOTT D. MEYERS

ST. LOUIS:

314.345.6274

SCOTT.MEYERS@

HUSCHBLACKWELL.COM

PAUL F. PAUTLER, JR.

KANSAS CITY:

816.983.8259

PAUL.PAUTLER@

HUSCHBLACKWELL.COM

Federal Judge Stops DOL's Overtime Rule From Taking Effect

On November 22, 2016, U.S. District Judge Amos Mazzant entered a nationwide injunction blocking the U.S. Department of Labor (DOL) from enforcing its new rule that would have raised the minimum salary level necessary to avoid paying overtime compensation. Mazzant unexpectedly held that the new rule effectively creates an unlawful salary test for determining which workers qualified under the professional, executive or administrative exemptions, commonly known as the white collar exemptions, of the Fair Labor Standards Act (FLSA).

The surprising decision in favor of the 21 states seeking the injunction comes just nine days before the DOL's new rule was set to take effect on December 1, 2016. When it was announced on May 18, 2016, the new rule doubled the salary level test that serves as a threshold for determining whether employees can be exempt from the FLSA's overtime requirements under one of the white collar exemptions. In addition to the new \$47,476 annual salary level (or \$913 per week), the rule also included a mechanism to automatically update the salary level for the white collar exemptions every three years, beginning January 20, 2020.

What Happens Next?

In light of this ruling, there is no present need to comply with the new rule by December 1, 2016. But these recent developments are far from final. The court merely granted a temporary injunction, which is important for at least two reasons. First, while it is not permanent at this point, it sheds light on what the court may decide regarding whether to permanently invalidate the rule. Second, because this is a preliminary injunction, it can be appealed immediately. Because a Texas District Court granted the preliminary injunction, an appeal would be heard by the Fifth Circuit. Historically, the

Fifth Circuit has routinely affirmed lower court decisions to grant preliminary injunctions, but at this point, nothing should be considered a sure thing.

Notably, the Senate's reluctance to confirm a ninth Supreme Court justice could provide an interesting twist. If the Fifth Circuit upholds the District Court's opinion, the federal government may appeal that decision to the U.S. Supreme Court. Should the Supreme Court's eight current justices end up in a 4-4 split, the Fifth Circuit's affirmance would stand, but other federal appellate courts could hold differently without clear guidance from the Supreme Court. Put simply, there is potential for some jurisdictions to hold the rule enforceable while others decide differently.

How Should Business React?

At this point, the only certainty is that the court's ruling has created massive uncertainty, leaving many businesses unsure how to handle the murky situation. On one hand, businesses are no longer required to comply with the new rules on December 1, 2016. Conversely, those who have already promised certain employees pay raises or who have implemented changes to their payroll system now face an unexpected dilemma.

Regardless of whether businesses have begun the process for implementing changes, plenty of questions exist. Can changes to payroll processes be postponed without enduring immense costs and disruptions? Can employees who have been promised raises be told that their increased pay is being halted? Before answering these questions, employers must consider all options, including the consequences this ruling has both financially and on morale.

Contact Us

We will continue to closely monitor the situation as further information becomes available. If you have any questions about the court's decision and what to do now, please contact an attorney in Husch Blackwell's Labor & Employment group.