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Payroll alert: Overtime rules, scheduled for December 1, are put on hold

Changes to the overtime standards from the Department of Labor were scheduled to be effective December 1, 2016. However, a court challenge may affect implementation of these new rules.

Overview

The Fair Labor Standards Act (FLSA) establishes the federal minimum wage and overtime requirements. Currently, the regulations generally mandate that employees working in excess of 40 hours per week are paid overtime at a rate of 1.5 times their regular wage unless they are classified as “exempt” under a two-part test based on the employee’s specific job duties and a salary threshold (currently \$23,660).

The rules were recently revised for the first time in over a decade through Department of Labor (DOL) regulations (scheduled to be effective December 1, 2016) that, among other things, increase the salary threshold to a standard salary level of \$47,476, or the 40th percentile of weekly earnings for full-time, salaried workers in the lowest wage Census Region (currently the South). As a result of this higher salary threshold, it has been estimated that this shift will cause at least 4.2 million employees who are currently classified as exempt to be at risk of becoming non-exempt.

Challenge and district court injunction

Twenty-one states and 50 business groups brought suit challenging the rules in the U.S. District Court for the Eastern District of Texas, noting that the significant compliance costs would cause irreparable harm by forcing states and businesses to substantially increase their labor costs.

Federal District Court Judge Mazzant enjoined enforcement of the rules, noting that the provision “creates essentially a de facto salary-only test.” Judge Mazzant further concluded that the rules violate the Administrative Procedures Act by implementing an

automatic wage update without the requisite notice and comment period. An appeal by the Labor Department would be to the U.S. Court of Appeals for the Fifth Circuit—a court that previously blocked executive action on immigration.

What to do?

Employers had been ramping up for changes to the FLSA based on the DOL regulations schedule to take effect on December 1, 2016. Employers need to review their proposed overtime policies and be prepared to consider halting implementation on some or all revisions to existing overtime policies/procedures while continuing to monitor developments as the case proceeds through the courts and the new administration takes office next year.

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