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LABOR AND EMPLOYMENT GROUP NEWS

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DOL'S NEW OVERTIME REGULATION WILL NOT GO IN TO EFFECT ON DECEMBER 1

By Madiha M. Malik and Michael C. Harrington

Yesterday, a Texas federal judge temporarily blocked the federal Department of Labor's proposed overtime regulation that would have increased the number of employees eligible for overtime pay by increasing the salary level for the "white collar" exemptions to \$47,476 per year.

Under the FLSA, employees must be paid time and a half of the employee's regular hourly rate for each hour worked over 40 hours a week, unless the employee falls within an exemption from overtime by meeting the criteria for salary and duties. As it stands, to qualify for a white collar exemption, the employee must meet the minimum salary level of \$455 per week or \$23,660 per year. The proposed regulation would have doubled that minimum salary level, allowing fewer employees to be exempt. The regulation would have also raised the salary used for "Highly Compensated Employees" from the current threshold of \$100,000 to the 90th percentile of average weekly salaried earnings - about \$122,000.

In blocking the regulation until trial, a Texas court reasoned that the DOL exceeded its authority by imposing an increased salary level that would supersede consideration of the employee's actual duties when determining whether employees fell within the overtime exemption. In light of the Court's concerns, the Court ordered a preliminary injunction to stop the rule from going in to effect on December 1, 2016, as planned.

Going forward, it remains to be seen how the DOL will respond to the injunction. Though the DOL may take steps to challenge the Court's decision before President Obama's term expires on January 20, 2017, given such a short time span, it is not likely that the rule will go in to effect this year.

For now, employers should continue to abide by the current overtime rules and await further developments. Employers who were planning to implement changes based on the projected impact of the proposed regulation may choose to reconsider their plans.

We are closely tracking the status of the rule and will circulate updates on any changes as they develop. If you have questions, please contact a member of our team. For more details, see our previous write-up [here](#).

If you have any questions on Labor and Employment issues, please contact

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