

21 States File a Lawsuit Challenging the USDOL's Revisions to the White Collar Exemptions

On September 20, 21 states filed a [lawsuit](#) against the U.S. Department of Labor in the U.S. District Court for the Eastern District of Texas, challenging the USDOL's [revisions to the white collar exemptions](#) under the Fair Labor Standards Act. In the lawsuit, the states are seeking a declaratory judgment that the USDOL violated the Administrative Procedure Act and the Tenth Amendment to the U.S. Constitution by promulgating the new regulations, and an injunction preventing the USDOL from implementing the new regulations.

The first claim for relief is that the application of the new regulations to state employers violates the Tenth Amendment to the U.S. Constitution. The Tenth Amendment provides that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or the people.” According to the complaint, enforcing the new regulations against the states “infringes upon state sovereignty and federalism by dictating the wage that states must pay to those whom they employ in order to carry out their governmental functions, what hours those persons will work, and what compensation will be provided where these employees may be called upon to work overtime.” The states allege that they will be forced to eliminate or alter employment relationships and cut or reduce services and programs as a result of the increased cost associated with compliance with the new regulations.

Although the first claim for relief appears to relate only to the application of the new regulations to state employers, the other claims for relief under the Administrative Procedure Act are asserted not only on behalf of state employers, but also on behalf of private employers. The second claim for relief is that the issuance of the new regulations exceeds the USDOL's statutory jurisdiction and authority under the FLSA, because Congress intended that an employee's duties — not salary — be determinative of exempt status and because there is no Congressional authorization for automatic increases to the minimum salary level every three years. The third claim for relief is that the USDOL circumvented the required rulemaking procedures by mandating automatic increases every three years instead of going through the appropriate notice and comment procedures each time the salary level will be increased. The fourth claim for relief is that the USDOL's issuance of the new regulations was arbitrary and capricious, and the fifth claim for relief is that the USDOL's issuance of the new regulations was an improper delegation of legislative power.

As of now, employers should continue to plan as if the new regulations will become effective on December 1. Many employers will have significant decisions to make about whether to increase certain employees' salaries to retain the employees' exempt status and whether to reclassify certain employees from exempt to non-exempt. Those decisions should be made soon, and employers should plan on moving forward with those decisions beginning with the pay period that encompasses December 1. If an injunction is issued between now and late November that delays or prohibits the implementation of the new regulations, employers can always put their plans on hold pending a final outcome of the lawsuit.

If you have any questions about this Information Memo, please contact [Subhash Viswanathan](#), any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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