

## A Quick Update Regarding the Lawsuits Challenging the USDOL's White Collar Exemption Regulations

As we previously reported, 21 states filed a [lawsuit](#) on September 20 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. On that same day, several business groups filed their own [lawsuit](#) in the same Court, also challenging the USDOL's white collar exemption regulations. As we quickly approach the effective date of the new regulations (December 1), many employers are wondering: what is the status of those lawsuits and how do those lawsuits affect our plans to communicate with our employees about changes that will be made?

The short answer to the first question — the status of the lawsuits — is that the Court has not issued a decision yet. On October 12, the 21 states filed a motion for a preliminary injunction, and on October 14, the business groups filed a motion for summary judgment. On October 19, because of the similarities in the allegations and the common underlying purpose of the two complaints, the Court consolidated the two cases. On November 16 the court held oral argument with respect to the states' motion for a preliminary injunction. The U.S. District Judge, Amos L. Mazzant, III, stated at the end of oral argument that the Court hopes that a ruling on the motion for a preliminary injunction will be issued on Tuesday, November 22. The USDOL's deadline to file a response to the business groups' motion for summary judgment is November 18, and the business groups will have until November 21 to file a reply. So, a decision on the motion for summary judgment is also not expected at least until November 22 at the earliest.

The answer to the second question — what effect the lawsuits will have on a New York employer's plans to communicate changes to its employees — is that it may not be feasible for employers to wait and see whether the Court issues an injunction before communicating with their employees. Employers will need to comply with the new regulations (assuming there is no injunction) effective at the beginning of the work week that encompasses December 1. For employers that have Monday through Sunday work weeks, that date will be Monday, November 28 — right after Thanksgiving weekend. Therefore, employers that want to provide their employees with as much advance notice as possible may find it difficult to wait and see whether the Court issues a decision on November 22 before letting their employees know that they will be converted from exempt to non-exempt status effective November 28.

Employers may want to consider including some language in their communications to employees to let them know that the changes in classification will occur unless there are developments prior to the effective date of the changes that either delay or prevent the new regulations from being implemented. However, even in the absence of such language, nothing would preclude an employer from restoring the status quo if a preliminary injunction is issued by the Court.

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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