

## U.S. District Court in Texas Issues Nationwide Injunction Preventing New Overtime Rule From Taking Effect

Yesterday, the U.S. District Court for the Eastern District of Texas issued a [nationwide injunction](#) preventing the U.S. Department of Labor from implementing its regulations revising the white collar exemptions. Therefore, the increase in the minimum salary level to \$913.00 per week that was expected to go into effect on December 1 will not occur on that date.

In granting the injunction, the Court held that Congress intended the executive, administrative, and professional exemptions to be based on an employee's duties — not on an employee's salary level. Specifically, the Court stated: "After reading the plain meanings together with the statute, it is clear Congress intended the EAP [executive, administrative, professional] exemption to apply to employees doing actual executive, administrative, and professional duties. In other words, Congress defined the EAP exemption with regard to duties, which does not include a minimum salary level." Although the USDOL has imposed a minimum salary level requirement to qualify for the white collar exemptions since the 1940s, the Court nevertheless determined that the increase in the minimum salary level from \$455.00 per week to \$913.00 per week was so large that "it supplants the duties test." The Court stated: "If Congress intended the salary requirement to supplant the duties test, then Congress, and not the Department, should make that change."

So, what does this mean for the future of these regulations? Although this is only a preliminary injunction that prevents the implementation of the regulations until a final determination is made, this could very well be a permanent end to the regulations. A final determination is unlikely to be issued before the inauguration of President Trump, and it seems less likely that the USDOL under the Trump administration will be inclined to continue to vigorously defend the regulations in this litigation. A more likely outcome is that the USDOL may rescind and reissue the regulations with a less drastic salary increase, or perhaps even not reissue the regulations at all.

This development leaves many employers wondering what to do about the employees who have already been told that they will be reclassified from exempt status to non-exempt status beginning next week and the employees who have been told that they will receive salary increases beginning next week in order to maintain their exempt status. The employees who have been told that they will be reclassified from exempt to non-exempt status can certainly be told at this point that they will remain exempt employees (assuming, of course, that their duties continue to qualify them for one of the white collar exemptions). In addition, from a legal standpoint, nothing would preclude an employer from rescinding the salary increases that were scheduled to go into effect next week for employees who were told that they would receive a salary increase to maintain their exempt status (unless the employer has entered into an employment contract that binds the employer to providing the salary increase). Obviously, from a human resources standpoint, this will require clear and prompt communication regarding the reason why the salary increase is being rescinded.

Employers in New York should also keep in mind that the New York State Department of Labor [has proposed a gradual increase to the minimum salary levels](#) to qualify for the executive and administrative exemptions. If these proposed regulations are adopted, the first salary increase will occur on December 31, 2016. Employers outside of New York City, Nassau, Suffolk, and Westchester Counties will be required to pay a minimum salary of \$727.50 per week to executive and administrative employees. Employers in New York City who employ 11 or more employees will be required to pay a minimum salary of \$825.00 per week to executive and administrative employees. Employers in New York City who employ 10 or fewer employees will be required to pay a minimum salary of \$787.50 per week to executive and administrative employees. Employers in Nassau, Suffolk, and Westchester Counties will be

required to pay a minimum salary of \$750.00 per week to executive and administrative employees. These amounts will increase each year. There is still no minimum salary under New York law to qualify for the professional exemption even under the new proposed regulations. We will provide an update regarding whether these proposed regulations become final regulations.

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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