

Fifth Circuit Court of Appeals Grants USDOL's Request to Expedite the Appeal

On December 8, 2016, the U.S. Court of Appeals for the Fifth Circuit granted the USDOL's request to expedite its appeal from [the preliminary injunction order](#) issued by the U.S. District Court for the Eastern District of Texas, preventing the new white collar exemption regulations from being implemented. Under the Fifth Circuit's [schedule for the appeal](#), the USDOL is required to file its appeal brief by December 16, 2016. The responding brief of the 21 states that obtained the preliminary injunction is due by January 17, 2017. The USDOL's reply brief is due by January 31, 2017. Amicus briefs in support of the USDOL are due by December 23, 2016, and amicus briefs in support of the 21 states are due by January 24, 2017. The oral argument before a panel of Fifth Circuit judges will be scheduled on the first available date after the close of briefing, and the Court will issue an expedited ruling on the appeal after oral argument is conducted.

Although the Fifth Circuit agreed to expedite the appeal, the briefing schedule issued by the Court confirms that the appeal will still not be decided before Donald Trump is inaugurated as the next President of the United States on January 20, 2017. Trump's announced intent to nominate Andrew Puzder as his Secretary of Labor sends a fairly clear signal that the Trump Administration will not support the new regulations as they are currently written and may even withdraw the pending appeal before a decision is issued by the Court. Puzder is the CEO of a chain of fast-food restaurants who has been a vocal opponent of the USDOL's increase to the minimum salary to qualify for the white collar overtime exemptions. On May 18, 2016, the same day that the USDOL issued its final regulations, Puzder wrote an [opinion piece for Forbes](#) soundly criticizing the regulations as counterproductive to the goal of increasing the wages of the middle class. In that article, Puzder wrote: "This new rule will simply add to the extensive regulatory maze the Obama Administration has imposed on employers, forcing many to offset increased labor expense by cutting costs elsewhere. In practice, this means reduced opportunities, bonuses, benefits, perks and promotions."

It remains likely that the [New York increases in the minimum salary levels](#) to qualify for the executive and administrative exemptions will be adopted. The 45-day comment period after the issuance of the proposed New York State Department of Labor regulations recently ended, and it is expected that the regulations will be adopted as final before the end of the year.

We will continue to provide updates as further developments occur.

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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