

NOVEMBER 23, 2016 | WAGE & HOUR COMPLIANCE

District Court Judge Grants Injunction Putting DOL Overtime Rule on Hold

In late September 2016, twenty-one states led by Texas and Nevada, along with the U.S. Chamber of Commerce and other business groups, challenged the U.S. Department of Labor's ("DOL") new overtime exemption rule set to take effect on December 1, 2016, and sought a nationwide injunction preventing the rule from taking effect.



The states argued that the DOL unconstitutionally overstepped its authority by establishing a federal minimum salary level that more than doubled the minimum salary threshold required to qualify for the Fair Labor Standards Act's ("FLSA") white collar exemption, and that the rule would result in a substantial increase in employer operating costs. [\[1\]](#) In particular, the states took issue with the policy behind the rule change, arguing that salary level alone does not reflect the type of work an employee performs, and that the DOL's regulation disregarded the text of the FLSA by imposing a salary threshold without regard to whether an employee actually performs bona fide executive, administrative or professional duties.

On Tuesday November 22, 2016, U.S. District Judge Amos Mazzant of the Eastern District of Texas [granted the states' preliminary injunction](#), stopping (or at least delaying) the DOL from implementing the rule that would have expanded overtime protections to more than 4 million employees nationwide.

The preliminary injunction preserves the status quo of keeping the old rule in place, while the court can now fully determine the final rule's validity, as well as the DOL's authority to promulgate the final rule.

In granting the injunction, Judge Mazzant agreed with the states that they would suffer irreparable harm due to the significant costs of complying with the rule. Judge Mazzant concluded that although the DOL has "significant leeway" to establish the types of duties that could qualify an employee for the white collar exemption, the DOL was not entitled to deference in creating the new rule because Congress intended the exemption to apply based on the tasks the employee actually performs, and not simply a minimum salary level. According to Judge Mazzant: "Congress defined the [white collar] exemption with regard to duties, which does not include a minimum salary level. With the final rule, the Department exceeds its delegated authority and ignores Congress's intent by raising the minimum salary level such that it supplants the duties test."

Although the injunction is only temporary, Judge Mazzant stated that the plaintiffs showed "a likelihood of success on the merits." According to Judge Mazza, "The state plaintiffs have established a prima facie case that

the Department's salary level under the final rule and the automatic updating mechanism are without statutory authority." Thus his decision casts significant doubt on the likelihood that the rule will be implemented as it is currently drafted. Following the ruling, the Justice Department said in a written statement that it was "reviewing the court's opinion and order and considering any next steps."

This ruling is a welcome sigh of relief for most employers. Indeed, because of this ruling, there currently is no need for employers to reclassify employees based on the new \$47,476 minimum salary threshold, raise certain employees' salaries over that threshold, switch employees to part-time status, or take any other steps they may have been planning to take on December 1 to comply with the new overtime rule. However, it is impossible to predict with certainty what will happen going forward. It is possible that after a delay, (i) the rule will end up being implemented exactly as it is drafted now; (ii) portions of the rule could be thrown out while other aspects of the rule remain or in place; or (iii) the rule could be stricken in its entirety. As a result, employers cannot just disregard the preparations they have made for the implementation of this new rule. Rather, employers should continue to have plans in place so that they are fully prepared to comply with the new rule if an appeal is successful, or if Judge Mazzant decides the case on the merits in favor of the Department of Labor.

We will continue to keep you apprised of any developments in this important matter for your business.

[\[1\]](#) The DOL estimated that the rule would cost the nation's businesses approximately \$300 million per year.