

Resources

New FLSA Regulations Enjoined!

November 23, 2016

Late Tuesday afternoon, the United States District Court for the Eastern District of Texas granted a motion brought on behalf of 21 states and supported by business groups led by the United States Chamber of Commerce to preliminarily enjoin the new overtime exemption regulations set to go into effect on December 1, 2016. Those new regulations were announced in May by the United States Department of Labor (“DOL”) and, if they had gone into effect, would have increased the minimum salary threshold for most executive, administrative and professional employees from \$455 per week (or \$23,660 per year) to \$913 per week (or \$47,476 per year). The new rules would have jeopardized the exempt status of 4.6 million employees.

The Elements for Preliminary Relief Were Satisfied by the States

At the outset, the court had to determine if the states will “likely succeed on the merits” as the case is further litigated, and if a permanent injunction is on the horizon. The states’ case was premised on both constitutional and statutory grounds. The court concluded that while the states’ constitutional claims were unlikely to succeed, their statutory arguments appeared strong and likely to succeed.

The court noted that the Fair Labor Standards Act (“FLSA”) provides that “any employee employed in a bona fide executive, administrative, or professional capacity... as such terms are defined and delimited from time to time by regulations of the Secretary, shall be exempt from minimum wage and overtime requirements.” According to the court, the issue boiled down to what Congress meant by “executive, administrative and professional.” The court concluded that Congress’ focus when the FLSA was enacted was on what these employees actually do, i.e., what are their duties, which, the court concluded, “does not include a minimum salary level.” That is, while the law generally grants administrative agencies great deference as they interpret statutes, “nothing... indicates that Congress intended the Department to define and delimit a salary level.”

Consequently, the court held that the DOL exceeded its authority by imposing a salary level requirement in the tests for these white collar exemptions. Further, the court stated: “Congress did not intend salary to categorically exclude an employee with [exempt] duties from the exemption,” but such an outcome, the court stressed, would happen under the new regulations. Indeed, this outcome was expressly admitted to by the DOL in the preamble to the new regulations, i.e., that the significant salary level increase would, in and of itself, make otherwise exempt employees non-exempt.

The court also held that absent an injunction, the states would be irreparably harmed. That harm would not only include the cost of paying higher salaries, but it would also entail the cost spent on compliance and the redirection of resources from other critical services of the state governments.

Finally, the court found that the public interest would be best served by it issuing an injunction. On this point, the court noted that more time would be needed for it to make a final ruling on the case, and that by issuing an injunction, the only harm to the DOL would be a delay in the implementation of the new regulation. Thus, the court concluded that preserving the status quo while the case continues on the merits is appropriate.

The Injunction’s Scope Is National

In light of the above, the court determined that an injunction was appropriate. The remaining issue regarded its scope. The DOL argued that it should only apply to those states that participated in the case, and established the potential of irreparable harm. The states argued that the injunction should apply nationwide. After noting that injunctions are dictated by the nature of the violation at issue and not its geographical scope, the court agreed with the states and applied its injunction nationwide.

Consequently, the court granted the motion of the preliminary injunction and enjoined the DOL from implementing and enforcing the new salary level regulations on December 1, 2016.

What's Next?

At this time, the new regulations are essentially on hold, subject to further litigation. The current regulations are not enjoined in the meantime. Those may later become an issue as the litigation proceeds, but for now, employers must continue to comply with the regulations currently in effect. Employers operating in states with their own laws and regulations must continue to comply with their states' laws; nothing in Tuesday's injunction affects state laws.

To be sure, many employers have already made or announced changes to conform to the regulations set to go into effect in just over one week. Those employers may consider cancelling those changes or retaining some of them. How to proceed will depend on the circumstances and each employer's assessment of the likelihood that the injunction will become permanent. Another unknown factor is the stance the Trump Administration will take on this matter. The incoming administration could continue to fight for the new DOL regulations, or could simply let the injunction stand so that it can chart its own path in 2017. Time will tell.

If you have any questions about the DOL regulations, or labor and employment laws generally, please call or email your Dykema Labor & Employment law contact, or the authors of this update, Robert Boonin (313-568-6707), James Hermon (313-568-6540), or Jack Schaedel (213-457-1766).

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