Client Alert: Federal Court Blocks New FLSA Regulations

BY DAVID M. FELPER AND ROBERT G. YOUNG • NOVEMBER 23, 2016

On November 22, Judge Mazzant of the United States District Court for the Eastern District of Texas entered a nationwide injunction blocking the Department of Labor's updated regulations under the Fair Labor Standards Act.

Last Summer, the Department of Labor announced sweeping changes to the regulations governing the executive, administrative and professional exemptions from overtime pay under the FLSA (the so-called "EAP exemptions"). In particular, the announced regulations increased the salary level to qualify for the EAP exemptions from $455 per week to $913 per week and also provided that the salary level would update automatically every three years based on Bureau of Labor Statistics data. The new regulations, which the Department of Labor estimated would expand overtime eligibility to more than 4 million additional workers, were set to take effect on December 1.

Seeking to block the new regulations, the State of Nevada and several other states (not including Massachusetts) filed a lawsuit in federal court in Texas. The States argued that the new regulations exceeded the Department of Labor's authority.

In a 20-page decision, the Court agreed with the States. The Court reasoned that the FLSA expressly provided an exemption from overtime for those employed in a "bona fide executive, administrative or professional capacity," but made no provision for a particular salary level that would be required. Thus, according to the Court, Congress intended the EAP exemptions to focus on the duties an employee performed to assess whether the individual should be exempt from overtime; though the terms "executive," "administrative," and "professional" were not defined in the statute, the Court reviewed dictionary definitions of those terms from the 1930s (when the FLSA was enacted) to understand their meanings. The Court then found that the Department of Labor's new regulations would create a "de facto salary-only test," as employees who were not earning at least $913 per week would not qualify as exempt regardless of the work they performed, and therefore exceeded the Department of Labor's authority to interpret and implement the statute. (The Court disclaimed any intention of questioning the legality of the current salary level test, though its reasoning in rejecting the new regulations suggests that *any* salary level set by regulation would be unlawful.) Further, the Court decided that its decision blocking the new regulations should apply nationwide, to avoid the confusion of different EAP exemption tests applying in different areas of the country.

As a result of this decision, employers that have been scrambling for months to analyze their current workforce and deciding how to address the Department of Labor's new rules are left in an uncertain state. The Department of Labor has the right to appeal the Court's decision, though with an upcoming change in Presidential administrations it is unclear whether an appeal, if filed, would be pursued to its conclusion (and even if so, whether an appeal would be successful). In the meantime, employers now must grapple with issues of how to manage their workforce going forward, especially with respect to those employees who had been told that their salaries would be increasing on

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December 1 to account for the new regulations.

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