



Eye On Washington

Regulatory Update



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FLSA Overtime Rules Temporarily Blocked

FLSA Changes No Longer Effective December 1, 2016

On November 22, 2016, a federal judge in Texas issued an injunction and temporarily blocked changes to the regulations governing the Fair Labor Standards Act (FLSA) set to go into effect on December 1, 2016. The court's action stops the overtime rule changes from going into effect nationwide, while the court decides the case.

Background

On May 18, 2016, the United States Department of Labor (DOL) released final regulations that modify certain provisions of the FLSA. Specifically, the final regulations increase the minimum salary required to be earned by an employee in order for that employee to be exempt from the FLSA overtime requirements from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476 per year). The current levels have been in place since 2004. The final regulations also established a mechanism for automatically updating the salary and compensation levels every three years, starting on January 1, 2020.

Additionally, the final regulations increased the total annual compensation requirement for highly compensated employees (HCEs) subject to a minimal duties test to \$134,004 per year from the current threshold of \$100,000, which was also in place since 2004. Under the final regulations an employee earning at least the required threshold is exempt from overtime if the employee customarily and regularly spends time on one or more exempt duties and the employee does not engage in manual work.

For more information on the revised overtime regulations, see the *Eye on Washington*, [DOL Releases Changes to FLSA Overtime Rules](#).

Challenge to FLSA Overtime Rules

Several business groups and twenty-one states filed lawsuits against the DOL in federal court (the United States District Court, Eastern District of Texas, Sherman Division) challenging the FLSA changes. On October 12, 2016, the twenty-one states asked the court for emergency preliminary injunctive relief and argued that the FLSA's overtime changes violate the Constitution by regulating the states and coercing them to adopt wage policy choices that adversely affect the states' priorities, budgets, and services. The court agreed with the states and granted an injunction delaying the overtime rule scheduled to go into effect on December 1. The delay is temporary while the case continues to be litigated and the court determines whether the DOL had the authority to make the FLSA changes and whether the FLSA changes are valid. The delay applies to employers nationwide.

The new FLSA overtime changes will not take effect on December 1, 2016. The court's preliminary injunction delays the effective date of the FLSA changes until the court makes a final decision. In addition, it is possible that the next administration could modify or repeal the FLSA changes separate and apart from what the court decides.



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What Should Employers Do Now?

Many employers have spent months preparing for the FLSA changes, identifying workers affected by the final regulations, determining whether to increase their salaries to comply or reclassify them as nonexempt employees, and communicating those changes to their employees. Employers rapidly need to assess what actions to take. For example, if an employer has already notified an employee of a salary increase effective December 1 or has already made the change, it may be too difficult to reverse that change or communicate that the change will not be made. Applicable state laws may require advance notice of any changes in pay and state laws may also govern the overtime exempt status of employees. Employers should consult their legal counsel to discuss options available before making and communicating decisions related to this latest development.

While the rule is delayed, employers should continue to evaluate the FLSA status of their employees by reviewing job duties and descriptions and ensuring that they have employees classified properly. Whether the rule is upheld or not, all employers are subject to current FLSA requirements that dictate proper classification and payment methods.

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