



Eye On Washington

Regulatory Update



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Texas Federal Court Strikes Down FLSA Changes – What Now?

As you are likely aware, last year, a federal District Court in Texas tentatively blocked the 2016 changes to the Federal Labor Standard Act's (FLSA) overtime rule from taking effect pending the Court's final decision. The blocked overtime rule, which would have applied to the "white collar," or executive, administrative and professional exemptions to the FLSA's overtime requirements, was previously scheduled to take effect on December 1, 2016. For more information [click here](#).

On August 31, 2017, the Court issued a final decision striking down the changes to the FLSA overtime rule.

Where Does the FLSA Overtime Rule Stand and What Should Employers Do Now?

The Court's ruling provides a sigh of relief for many employers, because the risk that the rule will be retroactively applied back to December 1, 2016 seems very unlikely. However, employers must remain vigilant in monitoring activity. Here is the latest, with a bit of background:

- Although the Obama administration had previously appealed the District Court's initial ruling to the United States Court of Appeals for the Fifth Circuit, the Trump administration indicated that it will no longer defend the specific salary amount called for by the blocked FLSA overtime rule. Instead, the Trump administration indicated that it would simply defend the Department of Labor's (DOL) authority to require a minimum salary amount.
 - The District's Court's final decision indicated that the DOL has the authority to require a minimum salary amount and clarified that the Court's concern was with the specific amount that was required. Specifically, the Court indicated that the minimum threshold must not be so high as to render the duties test moot. The duties test requires that employees perform certain types of tasks in order to be considered exempt under the FLSA.
 - The Trump administration may therefore decide to drop its current appeal before the Fifth Circuit, or the appeal may be rendered moot by the District Court's issuance of the permanent injunction. At the same time, the administration has issued a Request for Information (RFI) regarding the overtime rule. The RFI is the first step toward proposing a new overtime rule which employers can safely assume will be lower than the previous salary amount under the blocked rule.
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- Finally, when the District Court previously blocked the FLSA overtime rule, the AFL-CIO sought to intervene in defending the rule fearing that the Trump administration would fail to adequately do so. The Texas District Court denied this request. Therefore it is possible that the AFL-CIO will appeal this ruling and attempt to defend the blocked overtime rule.

While the rule has been struck down by the federal District Court in Texas, 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. The vast majority of employers are subject to current FLSA requirements that dictate proper classification and payment methods.

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