

PUBLICATION

Obama's Overtime Rule is Overruled

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The Obama administration's controversial overtime rule is now dead in the water. Yesterday, a Texas federal court ruled in favor of the 55 state and business plaintiffs who challenged the rule.

How did we get here?

The Fair Labor Standards Act (FLSA), the federal wage and hour law, requires workers to be paid an overtime premium (generally time-and-a-half) for every hour worked over 40 in a workweek. But there are exemptions to the overtime rule. The FLSA states that "any employee employed in a bona fide executive, administrative, or professional capacity" is exempt from overtime. Exemption is based upon three things:

1. How the worker is paid (salary as opposed to hourly);
2. How much the worker is paid (the salary threshold); and
3. The duties the worker performs (the job duties tests).

President Obama and his labor secretary, Thomas Perez (who now chairs the Democratic Party), wanted more workers to be eligible for overtime. So in 2016, the Department of Labor (DOL) issued a new overtime rule increasing the salary threshold needed to qualify for exemption from \$455/week (\$23,660) to \$913/week (\$47,476). The Obama DOL did not, however, make any changes to the job duties tests. The new rule was to take effect on December 1, 2016.

The Challenge

Business groups, including the United States Chamber of Commerce, argued that doubling the threshold was unreasonable and illegal. So did Republican attorneys general and governors of 21 states. Two lawsuits were brought against the DOL in a federal court in Texas and then consolidated into a single lawsuit. The business groups and states argued that the Obama DOL put too much emphasis on salary without weighing it against the job duties test. The basis of the argument was that the DOL exceeded its authority when it made salary the determining factor in whether the person is entitled to overtime.

The Court's Response

Ten days before the overtime rule was to take effect, the Texas district court issued a nationwide temporary injunction arguing that the DOL had exceeded its authority by doubling the salary threshold. This injunction effectively stopped the implementation of the new overtime rule, but only on a temporary basis. Because of the late ruling, many employers had already made adjustments to employees' pay in anticipation of the new overtime salary threshold going into effect.

The Obama DOL appealed the injunction. That appeal was still pending when the Trump administration took over – and the Trump DOL did not withdraw the appeal. Meanwhile, the plaintiffs (the business groups and states) still had a pending motion for summary judgment in the district court – a motion, which if granted, would end the case. With the injunction appeal pending, the Texas district court ruled on the plaintiff's motion in favor of the businesses and states that challenged the rule. The end result is that the case is now over and the Obama overtime rule is invalidated.

What Now?

What remains unanswered are the Trump Administration's plans for the overtime law. Secretary of Labor Alexander Acosta indicated that the DOL is going to take another stab at re-drafting the overtime regulations. Acosta also stated that he believes the current salary threshold is too low. While the Obama administration only altered the salary threshold requirements for exemption, there are still many proponents of a revision to the job duties tests, which are cumbersome and sometimes difficult to interpret and apply correctly. On July 26, 2017, the DOL published a [request for information](#) (RFI) asking stakeholders for their input on what changes, if any, should be made to the overtime rules. Based upon the scope of the questions proposed by the DOL, it appears that the agency is going back to the drawing board. So far, the DOL has received over 120,000 responses to the RFI. The deadline to submit responses to the RFI is September 25, 2017.

Upcoming Webinar:

If you would like more information about the current state of the overtime and other employment laws under the new administration please join us for a webinar on September 13, 2017 to learn what to do now: "Stumped By Trump? Employment Law Under the New Administration."

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