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Overtime Regulations Struck Down: The Department of Labor is forbidden from enforcing new salary threshold

With many businesses scurrying to come into compliance with the new Department of Labor overtime regulations a mere nine days before they were scheduled to take effect, a court in Texas issued a nationwide injunction yesterday forbidding the Department of Labor from enforcing those regulations. The new regulations would have required all employers subject to the Fair Labor Standards Act to pay their “white collar” employees at least \$913 per week to remain exempt from overtime. This would have more than **doubled** the current \$455 per week salary threshold — a change that could have had ruinous consequences for many businesses, non-profits, and government agencies. At least for now, employers are not legally required to comply with the new salary threshold. However, as discussed below, employers must analyze both their legal and business risks before changing course and deciding not to implement the now enjoined salary threshold.

The Court’s Decision

In his decision, Judge Amos L. Mazzant, a President Obama appointee, determined that the Department of Labor exceeded its statutory authority. The court concluded that, while Congress intended the Department of Labor to delimit the types of duties required for an employee to fall within the “white collar” exemption — i.e., the duties test — it did not intend the Department of Labor to delimit a minimum salary threshold. At the very least, Congress did not intend a salary threshold that is so high that it supplants the duties test. The court noted that 4.2 million workers currently ineligible for overtime were going to become eligible under the new regulations without any change to their duties. This result, which the court equated to a de facto salary-only test, is contrary to congressional intent. Accordingly, the Court issued a nationwide

injunction preventing the Department of Labor from enforcing the new regulations.

What Now?

The court's decision may be welcome news for many employers, but for others who have already implemented changes to comply with the new salary threshold, the decision likely raises only additional questions. Many employers, for example, have already raised salaries of their affected employees, or have converted their affected employees to hourly workers. These employers must now decide whether they can — or should — “unring the bell.” While the court's decision certainly gives employers the legal right to roll back the clock, at least temporarily, there are many unknowns that must be considered before making that business decision.

For one thing, the court's decision is merely “preliminary.” This means the court's decision could be changed at any time. The parties to the lawsuit could, for instance, present additional evidence or argument that convinces the judge that his preliminary decision was wrong. The Department of Labor could also appeal the judge's decision, and the appellate court could conclude that the judge's decision was wrong and dissolve the injunction. If either of these things happen, the regulations would become immediately enforceable, and may, in fact, be enforced retroactively. Employers that choose to revert to their old policies (and those that have not yet implemented the new regulations) should, therefore, have a contingency in place in the event the court's decision is suddenly reversed. This contingency plan may include having any employees impacted by the salary threshold (any employees now considered exempt, but who would be non-exempt under the new salary threshold) keep accurate records of all their hours worked.

Rather than immediately reverting to their old policies, employers could, instead, take a wait-and-see approach to determine whether the court's decision becomes permanent, whether the DOL appeals the decision, or whether the next presidential administration or Congress rescind the regulations. While this more conservative approach may be costly for those employers that have raised the salaries of their employees, it comes with the benefit of knowing

that, whatever is the fate of the court's decision, their policy will comply with the law.

Regardless of how employers react to this decision, they must still ensure that their exempt "white collar" employees perform duties that qualify for either the executive, administrative, or professional exemptions. The "duties test" remains entirely unaffected by the court's decision.

Bottom Line

The bottom line is that the Department of Labor is currently foreclosed from implementing and enforcing the new salary threshold. For more information on the overtime regulations and the nationwide injunction halting their implementation, please contact [Kyle Johnson](#), [Jeffrey Lindemann](#), [Mekesha Montgomery](#), [Neal Shah](#), [Amy Wilson](#) or any other member of Frost Brown Todd's [Labor and Employment](#) practice group.

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