

Changes to FLSA Overtime Exemptions Blocked; Now What?

On November 22, 2016, the United States District Court for the Eastern District of Texas granted a nationwide preliminary injunction temporarily blocking the enforcement of the Department of Labor's (the "DOL") changes to the Fair Labor Standards Act's (the "FLSA") overtime exemptions. These regulations would have raised the minimum salary level threshold from \$455 per week to \$913 per week for most exempt, white collar employees. Reinhart previously reported on these changes in "[Are You Ready? Updates to FLSA Will Take Effect December 1, 2016.](#)"

The court's decision, coupled with the recent election of Donald Trump, complicates matters for employers that were set to implement changes in response to the DOL's rule. The DOL is expected to appeal the district court's preliminary injunction order to the Fifth Circuit Court of Appeals, but there may not be enough time for the appellate court to issue a final decision before Inauguration Day on January 20, 2017. If the Fifth Circuit does not act before Inauguration Day, it is possible that the Trump administration will withdraw the regulations or drop any pending appeal, which would prevent the rule from ever going into effect. It is also possible that the Republican-controlled Congress will pass legislation to override the DOL's regulations.

Although the DOL's changes to the FLSA's overtime requirements remain in flux, employers should consider the following guidance to minimize their exposure and maintain employee morale:

- Employers that have formally announced and implemented salary increases may want to keep those increases in place. Rescinding salary increases could damage the morale of any employees who were expecting an increase in salary.
- Employers that have not yet announced or implemented salary increases should consider putting those increases on hold until it becomes clear whether the district court's decision will stand.
- Keep track of overtime hours worked by employees whose classifications would have changed from exempt to nonexempt under the DOL's new regulations. If the court's preliminary injunction order is vacated and the DOL's changes to the FLSA's overtime exemptions are reinstated, the DOL might retroactively enforce its regulations as intended starting December 1, 2016.

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- Notify employees of the district court's preliminary injunction order and the company's intention to either honor salary increases as announced or to hold off on implementing salary increases until the courts reach a formal resolution. Such notice should be made in compliance with company policy, contractual requirements, and state laws that require employers to give employees advance notice of any change to compensation.

Reinhart continues to monitor this matter closely. But to discuss the particular needs of your organization, please contact [Rob Driscoll](#), [Katie Triska](#) or your Reinhart attorney for further guidance.

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