



Douglas Diaz weighs in with Texas Lawyer - 5th Circuit Grants Expedited Hearing in Overtime Rule Litigation

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The U.S. Court of Appeals for the Fifth Circuit granted an expedited hearing for the Department of Labor in litigation over new overtime regulations.

The Labor Department is seeking a hearing in its effort to overturn a trial court's ruling halting the Obama administration's proposed regulatory revisions that would have doubled for most employees the salary proposed threshold for overtime pay. Those rules were halted from taking effect on Dec. 1.

The appellate court ordered that oral arguments will be scheduled after Jan. 31, 2017, 11 days after President-elect Donald Trump is set to be inaugurated.

For lawyers advising employers, that timing prompts questions, with speculation that the Labor Department under Trump may drop the appeal.

"Bottom line for employers is unfortunately much uncertainty," **Doug Diaz**, a partner with Archer in Haddonfield, New Jersey, wrote in an email.

"In the event the appeal is successful and the overtime rule is enforced retroactively, employers may be liable for overtime to those employees classified as exempt from overtime under the current rules, but not under the new rule," Diaz wrote.

“At a minimum, employers should therefore keep accurate records of hours worked and ideally, if possible, limit overtime until there is more clarity, in order to reduce any potential exposure in the event of a successful appeal,” Diaz added.

On Nov. 22, U.S. District Judge Amos Mazzant, who presides in a Sherman, Texas, courtroom, granted Texas and other states their request for a preliminary injunction to halt the Obama administration’s proposed regulatory revisions, which had been scheduled to become effective Dec. 1.

Mazzant, who was appointed to the federal bench by President Barack Obama in 2014, granted the preliminary injunction, siding with the 21 states challenging the new overtime rules. The Texas-led coalition established “a prima facie case” that some of the Labor Department’s proposed changes were without statutory authority, Mazzant wrote.

The Labor Department had estimated the rule changes would, if implemented, expand overtime coverage to more than 4 million additional workers.

Under the Fair Labor Standards Act, employers must pay their nonexempt employees time-and-a-half for working more than 40 hours per week if the employees make less than \$23,660 per year.

But under the proposed revision of the FLSA regulations, more employees would have gotten this mandatory overtime, as the exempt salary threshold will be raised to \$47,476.

Related People



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