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November 2016

Client Advisory

NOT SO FAST!—JUDGE ENTERS NATIONWIDE ORDER BLOCKING NEW OVERTIME RULES

In a stunning development, the United States District Court for the Eastern District of Texas granted an emergency motion for preliminary injunction that challenged the validity of the Department of Labor's new overtime rule, just about a week before the rule was to take effect. Significantly, the Order granting the motion enjoins the rule nationwide until further notice and final determination by the Court. The rule enjoined would have increased the minimum salary level for purposes of qualifying as an "exempt" employee under the Fair Labor Standards Act (FLSA) from $23,660 to $47,476. It also would have established an automatic updating mechanism that adjusts the minimum salary level every three years. Based on the rule, employers would have been required to pay overtime to employees who worked more than 40 hours in a workweek and earned less than the $47,476. This was a major overhaul of the FLSA by the Obama administration and employers had been preparing for it since issuance of the Final Rule on May 23, 2016. (See prior Advisory, 5/20/16).

Twenty-one states and various business groups, however, challenged the validity of the Final Rule in the federal court in Texas. They argued that the Department of Labor exceeded its authority in adopting the Final Rule. The Court agreed. In so finding, the Court reasoned that the FLSA language exempting from overtime "bona fide executive, administrative, and professional" employees did not mention a salary level requirement. Instead, the Court found that the "plain meaning" of the statutory language indicates that these exemptions "depend on an employee's duties rather than an employee's salary" and that the Final Rule in essence created a "de facto salary-only test." Thus, while the Court found that the Department of Labor had "significant leeway" to establish the types of duties that might qualify an employee as exempt from overtime, the FLSA did not allow the Department of Labor to "define and delimit with respect to a minimum salary level." As the Court put it, "[i]f Congress intended the salary requirement to supplant the duties test, then Congress, and not the Department, should make that change."

The incoming Congress, however, is unlikely to make that change. So, what are employers to do who have already spent time preparing for the new overtime rule? It may be too late, or impractical, to do anything now for those employers who have already announced changes in salaries or reclassified employees. For those employers who have not yet acted on any planning they have done, they can refrain from any implementation and hold their breath in the event of an appeal of the District Court's decision. An appeal is likely given the statement issued by the Department of Labor stating that it disagreed with the decision "and we remain confident in the legality of all aspects of the rule" and are "considering all of our legal options."

We will continue to monitor the developments of this case. If you have any questions about this advisory or other labor and employment matter, please contact any member of Archer & Greiner's Labor & Employment Law Group in Haddonfield, N.J., at (856) 795-2121, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, in Philadelphia, Pa., at (215) 963-3300, or in Wilmington, Del., at (302) 777-4350.