

## CLIENT ALERT JUDGE ISSUES AN INJUNCTION ON THE NEW DEPARTMENT OF LABOR REGULATION

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*On November 22, 2016, Judge Amos L. Mazzant, Federal Judge in the Eastern District of Texas, issued a preliminary injunction on the new Department of Labor Overtime Wage Regulations, scheduled to take effect December 1, 2016.*

As a reminder, the Department of Labor issued regulations this past summer that would have raised the minimum amount of salary to pay an exempt manager under the Fair Standards Labor Act from \$23,500 to \$47,400. This dramatic increase was opposed by approximately 20 different states, as well as several chambers of commerce who sued on behalf of private businesses nationwide. Those two lawsuits were consolidated in Judge Mazzant's court.

Judge Mazzant found that the plaintiffs were likely to succeed in their argument that the Department of Labor lacked authority under 29 U.S.C. Section 213(a)(1) to use a salary to determine whether an employee is qualified as an exempt manager under the Fair Labor Standard Act. The new regulations made no change to the existing "duties test" required to show that someone is exempt as a "manager" based on the administrative, executive, or professional exemptions, but it did significantly raise the salary test. Judge Mazzant concluded that this "essentially creates an improper "salary only test". In other words, the significant increase in the amount of the salary swallowed up whether the managers were exempt based on the duties they were performing. Consequently, he concluded that the regulations were "contrary to the statutory text and Congress' intent." Although this was a ruling from a Texas Federal Court, this is a **nationwide** injunction covering all state employers and private businesses.

Importantly, this is a **preliminary** injunction which means that Judge Mazzant must make a final determination on the regulations' legality in the future. It is possible that the final outcome could be different. Expect to see an emergency appeal of this ruling by the Department of Labor to the Fifth Circuit Court of Appeals.

Add also to this mix that Donald Trump will become President on January 20, 2017. A Trump Administration, accompanied by a new Secretary of Labor, could spell the end for the new regulations. For example, the new administration could simply decide to follow Judge Mazzant's decision and use the delay to open a new rulemaking proceeding to further revise the rule.

### **WHAT TO DO NOW?**

- For those employers who have already attempted to comply with the regulations by putting in place salary increases or modifications to job duties of certain categories of employees, consider the feasibility of retracting them. In some instances it may be feasible, in others it may not. For example, it may be easier to reinstate a manager's job duties than pulling back a salary increase up to \$47,400 that certain categories of employees have already been advised of.

- In those situations where employees have not been advised of salary increases up to the \$47,400 figure, employers can more easily continue “business as usual” until a final determination is made on these rules.

Below is a link to the court’s ruling for those interested.

Feel free to contact us with any questions or comments concerning this Alert.

[http://www.nytimes.com/2016/11/22/business/obama-rule-to-expand-overtime-eligibility-is-suspended-by-judge.html?\\_r=0](http://www.nytimes.com/2016/11/22/business/obama-rule-to-expand-overtime-eligibility-is-suspended-by-judge.html?_r=0)