

December 1 Overtime Rule Blocked

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At the eleventh hour, U.S. District Judge Amos Mazzant of the East District of Texas ruled in favor of 21 states and issued a [nationwide injunction](#) against the U.S. Department of Labor (DOL) and its efforts to radically expand the coverage of the Fair Labor Standards Act (FLSA). Specifically, per the order issued in *State of Nevada v. United States Department of Labor* on Nov. 22: "... the [DOL's] Final Rule described at 81 Fed. Reg. 32,391 is hereby enjoined. Specifically, Defendants are enjoined from implementing and enforcing the following regulations as amended by 81 Fed. Reg. 32,391; 29 C.F.R. §§ 541.100, 541.200, 541.204, 541.300, 541.400, 541.600, 541.602, 541.604, 541.605, and 541.607 pending further order of this Court."

The preliminary injunction is a blow to the DOL, which had estimated expanded overtime coverage to more than four million additional employees. The court's order at this point halts enforcement of the DOL's Final Rule. The preliminary injunction means that, for the time being, employers do not need to worry about the increased salary threshold for exempt employees under federal law. These increases were due to go into effect next week, on Dec. 1.

The 21 states that requested the emergency relief satisfied the prerequisites for a preliminary injunction, the Texas court said. According to Judge Mazzant, who was appointed to the bench by President Obama in 2014, "The state plaintiffs have established a prima facie case that the [DOL's] salary level under the final rule and the automatic updating mechanism are without statutory authority." Judge Mazzant further concluded that the governing statute for the Executive, Administrative and Professional exemptions, 29 U.S.C. § 213(a)(1), "is plain and unambiguous and no deference is owed to the [DOL] regarding ... interpretation." Though the DOL has been setting a minimum salary level for decades, the court's reasoning supports the conclusion that the DOL exceeded its statutory authority in setting any minimum salary level.

At a hearing in this case last week, Judge Mazzant gave advance notice that his decision would be issued by Nov. 22. The implementation date for the new DOL rule was Dec. 1, and numerous employers have already made necessary changes to comply with the deadline. The DOL's new rule would have, as of Dec. 1, increased the FLSA's "white collar" salary threshold from \$23,660 to \$47,476 per year, with an index for future increases.

The new rule would have also increased threshold pay for the "highly compensated employee" from \$100,000 to \$134,004. Of course, a preliminary injunction is not a final ruling, and now employers—many that have already

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implemented changes to comply with the impending Dec. 1 deadline—need to decide how to proceed. However, given the change in administration, it is not clear if these regulations ever will be put into effect.

What's next? There could be a hearing on whether to make the injunction permanent, but the incoming administration could attempt to settle the litigation and withdraw the offending regulation. In addition, there is a bill in Congress to reject this and several other Obama Administration regulations. It is likely that some form of that bill will pass the next Congress and would be signed by then-President Trump. If the injunction becomes permanent or if the new president reverses the regulation, then any minimum threshold presumably would need to be addressed through the legislature and/or additional rule-making. We will provide continuing analysis of the status of the preliminary injunction and how employers can and should address it.