

COURT INVALIDATES DEPARTMENT OF LABOR'S OVERTIME RULE

WHAT YOU SHOULD KNOW:

On August 31, 2017, Judge Amos Mazzant, District Court Judge in the Eastern District of Texas, ruled that the Department of Labor's proposed new Overtime Rule is unlawful.

In 1938, Congress enacted the Fair Labor Standards Act which established the now-familiar structure (for most employees), broadly described as the existence of a minimum wage, subject to overtime pay at 150% thereof, for all hours above 40, worked in a given week, by a given employee. However, since 1938, employees engaged in a "bona fide Executive, Administrative, or Professional capacity" have been exempt from the overtime rules (The "EAP Exception").

Congress did not define "bona fide, executive, administrative, or professional," but it did delegate authority to establish such definitions to the Secretary of Labor (the "Secretary"), who, in turn, delegated to the Department of Labor (the "DOL"). Beginning in 2004, the DOL has used a three-part test to identify individuals subject to the EAP Exception: (i) payment on a salary basis; (ii) such salary being at least at the minimum salary level established by regulations (currently \$23,660 annually); and (iii) performance of bona fide executive, administrative, or professional duties, as established by regulations.

Under the proposed new Overtime Rule, the DOL would have increased the minimum salary level in its three-part test from \$23,660 annually to \$47,476 annually. The clear result would have been a shift away from the traditional, duties-based analysis set forth in the statute, because all salaried employees paid less than \$47,476 annually would have been eligible for overtime, regardless of their job function. Additionally, the proposed Overtime Rule created an automatic updating mechanism which would have adjusted the overtime-mandatory salary upward every three years, commencing Jan. 1, 2020.

In making his ruling, Judge Mazzant found that the FLSA clearly expresses Congress's unambiguous intent to define the EAP Exception with regard to job duties. The Court also found that the minimum salary requirement of the 2004 regulations is permissible, because it serves only to assist the DOL in identifying those employees whom Congress intended to exempt; but that shifting to a de-facto salary-only analysis was clearly beyond the DOL's authority, because such a radical shift would have clearly been counter to Congress's intent to apply the EAP Exception based on an analysis of an employee's job duties.

WHAT IT MEANS TO YOU:

DOL's implementation of the proposed Overtime Rule was enjoined by the Court in November, 2016. Thus, it never went into effect. For now, the traditional rules remain in effect. The salary element of the traditional, three-point test remains \$455/wk. (and the threshold for highly-compensated employees remains at \$100,000).

Going forward, the DOL informed the Court in its June, 2016 brief, that it intends a new round of rulemaking, which it initiated on July 26. The comment period remains open until September 25, 2017. Thus, there is likely to be some change, which may very well incorporate an upward adjustment to the \$455/wk. element of the three-part test for the EAP Exception.

However, in the short-term, no appeal of Judge Mazzant's decision is expected, because, during briefing, the DOL essentially abandoned its defense of the proposed Overtime Rule, in favor of the new round of rulemaking mentioned above.

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