

Federal Court Suspends December 1 Deadline for FLSA Overtime Compliance

A federal court issued a preliminary injunction on Nov. 22, 2016 that suspends the implementation of a U.S. Department of Labor (DOL) requirement that would have doubled the salary level required to exempt employees from overtime pay. The ruling isn't permanent but it casts doubt on the likelihood that there will remain a December 1, 2016 deadline for employers to comply with the new DOL requirements to either increase the base salary levels for exempt employees or pay them overtime.

What this means for employers

The cut-to-the-chase assessment of this ruling is that employers don't have to meet the DOL salary increase requirements by December 1. With fewer than two weeks before that previous deadline, many member program directors already have made plans to meet the new salary requirements for their staff members. Now there are two choices: continue to implement plans to increase staff salaries or wait until the court issues a final decision on the new federal overtime rules. Either way, you will need to make that decision and convey it to employees as soon as possible.

What the federal court ruling means

The ruling from the U.S. District Court for the Eastern District of Texas was issued in a consolidated case originally filed separately by 21 state Attorneys General and the U.S. Chamber of Commerce. The court's preliminary injunction in the case suspends the Department of Labor's (DOL) ability to require, or enforce, the December 1, 2016 deadline for overtime compliance by U.S. employers. That DOL change to its rules relative to the Fair Labor Standards Act (FLSA) increased the salary threshold to \$47,476 for exempt employees, requiring overtime pay for those employees paid less than that new base salary level.

"A preliminary injunction preserves the status quo while the court determines the department's authority to make the final rule as well as the final rule's validity," said Judge Amos Mazzant of the U.S. District Court for the Eastern District of Texas in a Nov. 22 ruling.

A preliminary injunction isn't permanent, as it simply preserves the existing overtime rule—which was last updated in 2004—until the court has a chance to review the merits of the case objecting to the revisions to the regulation.

Alfred Robinson Jr., an attorney with Ogletree Deakins in Washington, D.C., and a former acting administrator of the DOL's Wage and Hour Division believes employers likely will want to leave decisions in place. If they have already provided salary increases to employees in order to maintain their exempt status, it would be difficult to take that back, Robinson said.

If there are exempt employees who were going to be reclassified to nonexempt, but haven't been reclassified yet, Robinson said employers may want to postpone those decisions and give the litigation a chance to play out." (<https://www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/Pages/judge-blocks-flsa-overtime-rule.aspx>. (Lisa Nagele-Piazza, 2016))

What this means for you as an employer

Challenging decisions are ahead for program directors and their Boards of Directors. We know that: 1) increasing the wages of a traditionally under-paid workforce has been a long-time goal for members; and 2) the significantly increased DOL wage changes remained a financial concern for many

organizations. Your annual budgets for 2017 likely have been approved and you have probably already made decisions on how you would address the Fair Labor Standards Act changes.

The conflict is real between what you may believe to be a move in a direction to be able to better compensate employees for what they bring to the organization, and the effects on the financial bottom-line for the organization. Programs can go forward with the changes that complied with the FLSA proposed changes or programs can wait to see what the final outcome is from the court action.

We will continue to provide information as we learn of new developments and as we receive guidance from sources we trust.