

Employers Receive Important Overtime Law News Just Before Labor Day

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Short of a successful (but highly unlikely) appeal, the Obama-era overtime rule is now officially no longer. That rule would have required employers to pay employees a little more than \$47,000 annually to qualify under one of the Fair Labor Standards Act's white collar exemptions. The rule was already in limbo when a Texas Federal district court judge temporarily prevented its enforcement just before Thanksgiving last year, and now that same judge has struck down the rule permanently just before another major American holiday.

The Decision in Brief

In short, in its opinion, the court said the DOL exceeded the authority granted to it by congress by fashioning a rule that effectively doubled the salary employers had to pay employees to qualify under the white collar exemptions. We'll leave it to other legal scholars to comment on the court's reasoning, but it was, in a word, interesting. The court also cleared up some confusion it may have caused from its Thanksgiving decision by confirming that it was sidestepping the question of whether the DOL has *any* authority to add a salary component to the exemption test. The net effect of the decision is that the DOL's authority to implement a salary basis test is now limited. It will be interesting to see whether the DOL, under the current administration, will ultimately raise the salary basis threshold and if so, what it will consider as a legally acceptable magic number.

Takeaways For Employers

Employers can now breathe a collective sigh of relief. However, there are still several important takeaways they should consider.

- Employers do not have to raise the salaries of exempt employees to meet the rule's new threshold or change previously exempt employees to a non-exempt status where their salaries fell below the threshold. Employers, however, must be mindful of *state wage laws*, such as New York and California, that already may require them to satisfy higher salary thresholds to meet those states' white collar exemptions.
- For those employers who already adjusted compensation or reclassified their employees in anticipation of the new rule, they should consider whether and how reversing course will impact their workforce. For some, their employees may have already grown accustomed to the changes that employers made nearly a year ago and the market may have already shifted, making a return to the status quo unrealistic or undesirable.
- Employers also may not attempt to recoup previously earned wages from exempt employees whose salaries were raised to meet the OT rule's higher threshold, as such actions would subject them to violations of other laws.
- The DOL has requested comments from the public on whether it should consider an alternative salary threshold raise, so employers should remain mindful of that potential development as they engage in compensation planning going forward. Some speculate that the threshold will be adjusted to stay on track with inflation, but we'll have to see where the DOL comes out on that.
- As a reminder, this decision, like the proposed OT rule before it, does not affect the job duties test for the white collar exemptions, so employers should continue to closely scrutinize the actual responsibilities of their exempt employees to ensure they satisfy the applicable exemption's test.

Authors