

MANCHESTER AREA HUMAN RESOURCES ASSOCIATION

SEPTEMBER 12, 2017

LEGAL AND LEGISLATIVE UPDATE

by

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Texas Court Finally Rules on Proposed Overtime Changes *Decision Halts Proposed OT Changes and Sends USDOL Back to the Drawing Board*

On August 31st a federal court judge in Texas issued a decision that formally nullified the Obama Administration's proposed revisions to federal overtime exemption rules. (*Nevada v. DOL*, E.D. Texas, No. 4:16-CV-731, 8/31/17). That same court issued an injunction late last Fall stalling the proposed Rule just before it was supposed to take effect. That decision sent employers scrambling to decide what to do next as many had already gone through an analysis of positions, duties, salaries, budgets and risk assessments in an effort to comply with the new standards. While the proposed changes had been in the works for a few years, the salary threshold changed over time and there were several looming challenges to the proposed changes including lawsuits which caused many employers to hold off until the last minute to make changes. Once the injunction was issued and the results of the November 2016 election were known, some employers, sensing that the overtime rule wouldn't stand, changed the overtime exemption classification for some employees, reverting back to their former classification. Still other employers, who made the classification changes and with that some changes to salaries, chose to leave the changes in place. Now all are wondering, "What should we do now?"

Let's review. These overtime rules apply to most employers. They require that when an eligible employee works more than 40 hours in a work week she/he should receive overtime pay for those extra hours of work. The extra pay is at 50% more than the employee's regular rate of pay. There are several exemptions from this overtime rule but the most common are known as the "white collar" exemptions. Those involve jobs that are classified as Executive,

Administrative or Professional. In addition to a person working in a position that was classified in one of these categories, the employee needed to be paid on a salary basis and that salary needed to be over an established amount. Before these proposed overtime rules were rolled out in 2015, the last time the US Department of Labor (“USDOL”) updated the federal overtime exemption rules was in 2004. At that time USDOL updated the description of duties (“duties tests”) for each of the white collar exemptions and it increased the minimum salary threshold from \$250 per week (\$13,050 per year) to \$455 per week (\$23,660). The most recent proposed OT changes left the duties tests unchanged but sought to increase the salary threshold to \$913 per week (\$47,476 per year), essentially double the existing salary threshold.

Challenges to the proposed salary threshold increase came from a few different groups. Some objected to the significant increase and its likely effect on jobs as employers were burdened with the increased salaries and jobs would either be eliminated or new jobs wouldn’t be created. Others claimed that this federal mandate was unconstitutional as it imposed salary requirements on state governments. Finally, others claimed USDOL wasn’t authorized by Congress to set salary thresholds for these overtime exemptions. They claimed Congress only authorized USDOL to determine the duties tests for the exemptions. In his decision, Judge Mazzant, addressed that last argument by stating that USDOL focused too heavily on what workers make instead of their job duties. However, before you tell your CFO you have lots of money now for bonuses, a new foosball table or other unplanned expenses, Judge Mazzant went on to say that it wasn’t that USDOL couldn’t set a higher salary threshold, just that the proposed amount was too high. That was the same argument others made early in the process as USDOL had departed from its former practice of factoring in the average salary in rural areas as well as urban areas. In the past that calculation resulted in a salary threshold at 20% of the national average. The proposed rule set the threshold at 40% of the national average for salaries and that, many argued, slanted the threshold in favor of urban areas and neglected the economic realities of employers in the rural areas throughout the US.

So, what’s next? The Trump Administration will not likely challenge the Judge’s decision. Also, in June, President Trump’s Labor Secretary, Alexander Acosta, indicated that USDOL may consider revising the salary threshold to approximately \$32,000 per year. Now that the Court has finally ruled on the proposed OT changes it is likely that USDOL will start drafting new OT rule changes. In the meantime, while members of Congress have suggested that they could likely codify these changes along with future salary threshold increases as part of federal law instead of in administrative rules from USDOL, Congress will likely spend its time on more pressing matters and leave this hot potato in the hands of the USDOL.

Stay tuned.

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Disclaimer

Please note: This outline is intended as general guidance and not specific legal advice. Your legal counsel should be consulted with specific questions or for advice on how to proceed with these matters.