

## Labor & Employment Law Alert: Court Blocks DOL Overtime Rules

An Eastern District of Texas federal judge has issued a nationwide preliminary injunction that prevents the United States Department of Labor (DOL) from implementing its new overtime salary level rule. The new overtime rule, which was to take effect December 1, 2016, would have increased the minimum salary level for overtime exempt employees from \$455 per week to \$913 per week. However, the preliminary injunction, which was issued November 22, 2016, is effective immediately and, because it is a nationwide injunction, precludes the DOL from implementing its new overtime rule in any of the states including New York State.

The court's decision allows employers nationwide to maintain the status quo, operating under existing federal regulations that govern overtime eligibility for executive, professional and administrative personnel. But this victory for employers may be short lived. First, the court issued a preliminary injunction, not a permanent one. Second, it is likely that the DOL will appeal the court's decision, asking the United States Court of Appeals for the Fifth Circuit to stay the injunction. If the Fifth Circuit grants a stay, the rule and higher salary threshold will likely go forward as planned. Third, it is uncertain what if anything the DOL will do under the incoming administration of President-elect Donald Trump.

This unexpected development presents challenges for employers, many of whom have spent significant time and resources planning for the rule change. Although employers are now able to suspend those planned changes, there are logistical and employee relation issues to consider in addition to legal ramifications. For example, many employees have already been apprised of pending salary increases so as to maintain their overtime exempt status under the new rule. Taking away the expected raise could impact employee morale. It is further complicated by the possibility that the preliminary injunction may be set aside, or stayed by a higher court, at which point employers will have to either increase exempt employee salaries or reclassify certain employees to non-exempt status.

The issue is even more uncertain for private sector employers in New York State who must deal with state law requirements in addition to those under the Fair Labor Standards Act (FLSA). Specifically, the New York State Department of Labor recently proposed regulations which would increase the salary threshold under state law for exempt employees. The proposed regulations would apply different minimum salary requirements based upon geographic location and employer size that would increase each year, but ultimately exceed the DOL's rate of \$913 per week by the year 2020.

The best strategy in addressing this development will be different for every business depending on their particular circumstance. Employers are encouraged to promptly address the issue with senior management and legal counsel to develop a plan that is best for the company and employees. Hancock Estabrook, LLP will continue to monitor this situation for new legal developments and will issue alerts as they occur.

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1800 AXA Tower | 100 Madison Street, Syracuse, NY 13202 | 315.565.4500  | [www.hancocklaw.com](http://www.hancocklaw.com)