

Labor & Employment Law Alert: Department of Labor Seeks Public Input on Overtime Rule

Employers have been waiting for more than seven months to see what action the United States Department of Labor (DOL) would take with respect to the 2016 final overtime rule (2016 Overtime Rule) issued under former President Obama. The 2016 Overtime Rule would dramatically increase the minimum salary threshold for exempt employees under the Fair Labor Standards Act (FLSA). While the issue is still unresolved, the good news for employers is that the DOL wants their input before taking a final position.

On July 25, 2017 the DOL issued a preview of a Request for Information (RFI), seeking public input on the effect of the 2016 Overtime Rule on the economy, employers and employees. The RFI will be formally published in the Federal Register on July 26, 2017, and the public will have 60 days to file comments on the issue. Employers interested in submitting comments to the DOL are encouraged to contact one of our employment attorneys, who can provide guidance on how to best present your concerns to the DOL.

The 2016 Overtime Rule has been widely criticized by employers because it would more than double the minimum salary threshold for exempt employees, from \$455 per week to \$913 per week. The 2016 Overtime Rule also would automatically increase this salary threshold in subsequent years. Thus, it was challenged by numerous employers, including the State of Nevada.

Currently, the 2016 Overtime Rule is stayed pursuant to a nationwide injunction issued by a federal District Court judge. That injunction is in effect pending an appeal before the Fifth Circuit Court of Appeals. On June 30, 2017, the DOL filed a brief asking the Fifth Circuit to affirm its authority to establish a salary threshold for exempt employees. The DOL also, however, specifically asked the Fifth Circuit not to address the validity of the 2016 Overtime Rule because it plans to issue revised rules. Put differently, the DOL wants the Fifth Circuit to confirm that it has the authority to determine the applicable salary threshold for the various exemptions under the FLSA, but does not support the dramatic changes in the 2016 Overtime Rule.

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