

## Labor & Employment Law Alert: Fifth Circuit Grants Expedited Hearing on Overtime Rule

Employers who opposed the federal minimum salary level increase to maintain overtime pay exemption under the Fair Labor Standards Act (FLSA) can rest a little easier this holiday season. It is now almost certain that the preliminary injunction precluding the U.S. Department of Labor (DOL) from implementing the salary level changes to the federal overtime regulations, that would otherwise have nearly doubled the minimum salary level threshold for most exempt workers, will remain in effect until President-Elect Trump's administration assumes control.

As expected, on December 1, 2016, the DOL filed notice of its intent to appeal the nationwide injunction precluding it from implementing changes to federal overtime regulations. The next day, the DOL filed a motion seeking to expedite its appeal. On December 8, 2016, the U.S. Court of Appeals for the Fifth Circuit granted the DOL's motion and established a scheduling order.

Under the scheduling order, oral argument will occur at the first available date after final briefs are due on January 31, 2017. As a result, unless the District Court that issued the preliminary injunction has a sudden change of heart, the issue will be left to new leadership under President-Elect Trump's administration. Most experts believe that under a Trump administration, the salary level increase will be abandoned entirely, or reduced significantly. Of course, nothing is guaranteed, particularly in this political season, so employers should remain cautious in their response to this news and continue to seek guidance from legal counsel.

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