

# What We Know

## ARTICLES & INSIGHTS

### ABOUT THE AUTHOR



[Connie Elder Carrigan](#) is a partner in the firm, with a practice concentration in Business Law. Her focus is assisting clients with issues regarding employment law, business advice and litigation, construction law, equipment leasing and creditor bankruptcy. Connie has lectured on topics ranging from employment law, bankruptcy, and equipment leasing to construction law.

## Halloween Ushers in Potential Resurrection of Proposed Overtime Rule

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You thought it was dead – but the United States Department of Labor (DOL) announced on October 30 that it plans to appeal a Texas district court’s August ruling which invalidated the Obama administration’s overtime rule. The proposed overtime rule served to significantly expand the pool of salaried employees who would be eligible to receive overtime compensation.

By way of background, in June of 2015, in response to former President Obama’s mandate that it take steps to ensure that employees are compensated fairly, the United States Department of Labor released proposed changes to the overtime regulations governed by the Fair Labor Standards Act (FLSA). Since 1940, the FLSA regulations governing overtime compensation have generally required that three tests be met in order for white-collar exemptions from overtime to apply: (1) the employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed; (2) the amount of salary paid must meet a minimum specified amount; and (3) the employee’s job duties must primarily involve executive, administrative, or professional duties as defined by the regulations. These regulations have not been significantly revised in many years.

The proposed rule would have had a significant impact on the workplace. Currently, in order to be exempt from overtime compensation, salaried workers must make more than \$455 per week (\$23,660 annually). The proposed rule set the minimum salary level at the 40<sup>th</sup> percentile of weekly earnings for full-time salaried workers, which for 2016 was \$970 per week or \$50,440 annually. For the first time ever, the DOL also proposed to establish a mechanism for automatically raising this minimum salary level on an annual basis, either based on percentiles of earnings for full-time salaried workers or based on changes in inflation.

In August of 2017, a United States district court judge in Texas struck down the overtime rule, reasoning that the proposed rule’s higher salary threshold essentially eliminated the duties test spelled out in the FLSA and replaced it with a salary test. In appealing the Texas court’s decision to the United States 5<sup>th</sup> Circuit Court of Appeals, the DOL announced that it seeks to stay the Texas court’s ruling while the DOL “undertakes

further rulemaking to determine what the salary level should be.” At the end of July, the DOL published a Request for Information in which it sought public input and commentary regarding the overtime rule. The comment period has now ended, and the DOL is in the process of determining next steps. In light of the Texas court’s ruling, it appears that the DOL sought a stay of the Texas court’s decision in order to protect its authority to establish a salary threshold for overtime that, under the Trump administration, will likely be lower than previously proposed but higher than the current threshold. In so doing, the DOL hopes to prevent a decision by the 5<sup>th</sup> Circuit that either overturns the Texas court’s decision or limits the DOL’s authority to determine a new salary level test.

If you have questions regarding this regulatory process or other legal issues, please feel free to contact Connie Carrigan at [ccarrigan@smithdebnamlaw.com](mailto:ccarrigan@smithdebnamlaw.com).

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#### CONTACT US

919.250.2000  
[mail@smithdebnamlaw.com](mailto:mail@smithdebnamlaw.com)

#### RALEIGH OFFICE

The Landmark Center  
4601 Six Forks Road, Suite 400  
Raleigh, NC 27609

Phone: 919.250.2000  
Fax: 919.250.2100

#### CHARLESTON OFFICE

171 Church Street  
Suite 120C  
Charleston, SC 29401

Phone: 843.714.2530  
Fax: 843.714.2541