

# Pretty Fast for Government Work: United States Department of Labor Files Notice of Appeal of Order Enjoining Enforcement of “Final” Overtime Rule

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On November 22, 2016, the United States District Court for the Eastern District of Texas granted a momentous preliminary injunction stopping the United States Department of Labor ("DOL") from implementing and enforcing its new and much-ballyhooed overtime regulations. As we wrote earlier, the district court concluded that the DOL lacks authority to "utilize a salary-level test or an automatic updating mechanism" with respect to promulgated changes in its new Fair Labor Standards Act ("FLSA") overtime regulations. The court also enjoined the DOL from implementing and enforcing those new regulations, which were to take effect on December 1, 2016.

The regulations would have dramatically increased the salary threshold for the so-called FLSA "white collar" exemptions. The district court believes - and ruled - that it has the authority to forestall, on a nationwide basis, the date on which employers must comply with the new overtime requirements. The court wrote that the plaintiffs, which include the State of Nevada and 20 other states, have proven, at least preliminarily, that the DOL's "salary level under the final rule and the automatic updating mechanism are without statutory authority," which is to say not authorized by the FLSA. The court concluded that the relevant provisions of the FLSA do "not grant the Department [of Labor] the authority to utilize a salary-level test or an automatic updating mechanism under the Final Rule."

The DOL is unpersuaded. The Secretary of Labor, on December 1, 2016, filed a "Notice of Appeal" of the injunction order with the United States Court of Appeals for the Fifth Circuit (which has jurisdiction over federal district courts in Louisiana, Mississippi and Texas).

The DOL's appeal, like the wheels of justice in general, could proceed at a plodding pace. The DOL and the plaintiffs will be given an opportunity to file memoranda of law (or "briefs") with the court of appeals and, after the memoranda have been filed, the court could permit the parties to present oral argument. It is conceivable that the court's final decision may not be issued until late 2017 or early 2018. However, the Fifth Circuit provides a procedure for "expedited appeals," which may be invoked by the parties or by the court itself. The DOL has invoked just such a procedure and this may move the case along, which seems appropriate given the millions of workers who will be affected by the decision of the court of appeals.

The DOL writes that it "strongly disagrees with the decision by the [district] court. The Department's Overtime Final Rule is the result of a comprehensive, inclusive rule-making process, and we remain confident in the legality of all respects of the

rule." As to whether that confidence is warranted, only time (and probably a lot of it) will tell.

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