



Client Alert: Fair Labor Standards Act (FLSA) Injunction Update

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On November 22, 2016 the United States District Court for the Eastern District of Texas (the “Court”) granted an Emergency Motion for Preliminary Injunction, preventing the national implementation of changes to the Fair Labor Standards Act (the “Final Rule”) on December 1, 2016. The injunction applies to all states and halts the new regulations included in the Final Rule, including the increase in the minimum salary level for exempt employees.

In 1938 Congress enacted the Fair Labor Standards Act (the “FLSA”) requiring employees receive at least the federal minimum wage for all hours worked and time and one-half for overtime pay. The FLSA contained exemptions to these provisions for employees in a “bona fide executive, administrative, or professional capacity.”¹ In 2004 the FLSA regulations were amended to include at least a minimum salary level for exempted employees.

On May 23, 2016 the Department of Labor (the “Department”) published the final version of changes to the FLSA (the “Final Rule”). This Final Rule increased the minimum salary level for exempt employees from \$455 per week to \$921 per week. The Final Rule was to take effect on December 1, 2016. The Final Rule would also establish automatic updates to the minimum salary level every three years, starting on January 1, 2020.

On October 12, 2016 the State of Nevada and twenty other states (the “State Plaintiffs”) moved for an emergency preliminary injunctive relief. The State Plaintiffs challenge the legality of the Final Rule, the Department’s authority to implement the rule, and the legality of the provision for automatic updates on the minimum salary. On November 16, 2016, the Court held a preliminary injunction hearing to consider the oral arguments regarding the motion. After oral argument and considering the briefs of the parties, the Court issued a nationwide temporary injunction, stopping the implementation and enforcement of the Final Rule pending a further Order of the Court.

The injunction maintains the status quo of the FLSA while the Court decides the validity of the Final Rule.

What Can Employers Do?

1. Suspend any changes in employment policies planned for implementation on December 1, 2016 in accordance to the Final Rule of the FLSA.

¹ 29 U.S.C. Section 213(a)(1).

2. Maintain the status quo in employment policies complying with the current FLSA regulations.
3. Educate its managers and Human Resources professionals about the injunction on the Final Rule to the FLSA that was meant to take place on December 1, 2016.

This communication is intended to provide general information about an area of law. It is not legal advice and does not create an attorney-client relationship. You should consult with legal counsel for advice specific to your circumstances.

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