

# EMPLOYMENT UPDATE

## FLSA Overtime Rule Blocked Until May 2017

case in point ...

**From the desk of John M. Kreutzer:** Days before it was to take effect, a federal district court judge in Texas blocked the U.S. Department of Labor from implementing its new overtime rule. The court issued an injunction prohibiting the rule's implementation and enforcement, which would have doubled the minimum salary level for executive, administrative and professional employees to be exempt from federal overtime requirements. The nationwide injunction means the rule will not take effect anywhere until the injunction is lifted.

As you may recall from my FLSA Employment Update last summer, the overtime rule was set to take effect on December 1, 2016 and narrow the "white collar" exemption from FLSA's overtime pay requirement (e.g., employees covered by the FLSA must receive pay for hours worked in excess of 40 in a workweek at a rate not less than one and one-half their regular rates of pay). The update increased the minimum salary for exempt employees from \$23,660 per year to \$47,476 per year and continue to increase automatically every three years. This change was expected to impact an estimated 4.2 million American workers.

However, 21 states sued the Department of Labor stating that they would suffer irreparable harm if the rule took effect as planned. The Texas judge held that the rule's automatic increase of the salary threshold every three years exceeded the Department of Labor's authority. The speed of implementation has been at issue since the rule was proposed.

On December 9, 2016, the Fifth Circuit granted the Department of Labor's request to expedite its appeal of the lower court's injunction. However, oral argument was scheduled to take place on January 31, 2017, under the new Trump administration's Department of Labor, which quickly obtained a 30-day extension.

On February 17, 2017, attorneys for the federal government filed an uncontested motion asking the U.S. Court of Appeals for the Fifth Circuit for a 60-day extension of time, to and including May 1, 2017, to file their reply brief in an appeal of the preliminary injunction that halted implementation of the new overtime regulations. In both motions, the government stated that its reason for needing an extension was to "allow incoming leadership personnel adequate time to consider the issues."

Employers who have been planning for the rule's implementation can delay those plans.

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