

New FLSA Overtime Exemption Rules – On Hold

On November 22, 2016 a [preliminary injunction](#) was granted to block the December 1, 2016 effective date of new Fair Labor Standards Act (FLSA) white collar overtime exemption rules. As you recall, the threshold salary for the overtime exemption was increased from current law's \$23,660 to \$47,476. Absent further action current law applies going forward. See *State of Nevada v. United States Department of Labor*, Eastern District of Texas, Civil Action No. 4:16-CV-00731. For more detailed information read the Q&A.

Q&A

Q: What is the legal significance of a preliminary injunction?

A: The scheduled December 1, 2016 effective date for the new rule, for the moment, is placed on hold.

Q: Absent further action, we continue to follow current law?

A: Yes. Instead of the new minimum salary of \$47,476, the applicable minimum pay is current law's \$23,660.

Q: Does this mean an employee, under the new rule, would not qualify for an exemption from overtime unless he/she makes at least \$47,476?

A: Yes.

Q: What is the purpose of a preliminary injunction?

A: It preserves the status quo in order for the court to have time to decide the case on the merits.

Q: So, this sounds like this preliminary injunction isn't permanent?

A: Correct. It is possible that the new Rule could still go into effect when the court eventually rules on the merits of the case.

Q: What specifically did the court hold?

A: The Court held:

- The Plaintiffs established a prima facie case that DOL's salary level and the automatic updating mechanism are without statutory authority.
- The governing statute, 29 U.S.C. Section 213(a)(1) is plain and unambiguous and no deference is owed to DOL's interpretation.
- Because the statute does not grant DOL authority to utilize a salary-level test or an automatic updating mechanism, the Court does not evaluate the Plaintiff's non-delegation argument.
- The Court has authority to enjoin the Final Rule on a nationwide basis and decides it is appropriate in this case.

Q: Is it possible the U.S. Department of Labor (DOL) will appeal the decision?

A: Yes. The DOL filed an appeal on December 1, 2016.

Q: Did DOL comment on the preliminary injunction?

A: Yes. They said:

- They "strongly disagreed" with the Court's decision" which has the "effect of delaying a fair day's pay for a long day's work for millions of hardworking Americans.

- The overtime rule is the “result of a comprehensive, inclusive rulemaking process, and we remain confident in the legality of all aspects of the rule”.
- We are currently considering all of our legal options.

Q: Was there a substantive legal statement by DOL?

A: Yes. They made the legal argument that since 1940 there are three tests for the white collar exemptions to apply:

- Payment of a predetermined and fixed salary that is not subject to reduction due to variations in the quality or quantity of work (salary basis test).
- Salary amount must meet a minimum specified amount (salary level test)
- Job duties must primarily involve executive, administrative, or professional duties as defined the regulations (duties test).

Q: Anything else by DOL?

A: Yes. Specifically:

- The Department has always recognized that the “salary level test works in tandem with the duties tests to identify” bona fide exempt employees.
- The “salary level requirements have been updated seven times since 1938”.

Q: So, now do we wait and see what happens next?

A: Yes.

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