

ALERTS

Texas Court Blocks New Federal Overtime Rule

November 23, 2016

On Nov. 22, 2016, Judge Amos L. Mazzant III of the U.S. District Court for the Eastern District of Texas issued a preliminary injunction temporarily preventing the U.S. Department of Labor (“DOL”) from implementing and enforcing the DOL’s final rule increasing the minimum salary level necessary to qualify for the executive, administrative and professional exemptions under the Fair Labor Standards Act. The injunction prevents the new rule — which was set to take effect on Dec. 1, 2016 — from taking effect.

As we discussed in a previous *Alert*, on May 18, 2016, the DOL issued a final rule that increased the salary level for the executive, administrative and professional exemptions from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476 per year) and the minimum salary level for the exemption for “highly compensated employees” from \$100,000 to \$134,004 per year. The final rule did not change the duties tests for the executive, administrative and professional exemptions or the minimal duties test for “highly compensated employees.” Judge Mazzant found that the new rule’s “significant increase to the salary level creates essentially a de facto salary-only test” which “supplants the duties test” for the executive, administrative and professional exemptions. Judge Mazzant therefore held that the DOL exceeded its authority in issuing the new rule because it was contrary to congressional intent. As a result, Judge Mazzant issued an injunction blocking the new rule from taking effect nationwide.

Commentators have opined that a successful appeal of Judge Mazzant's ruling by the DOL prior to Jan. 20, 2017, is unlikely. Absent such an appeal, the Trump administration could instruct the DOL to cease defending the rule in any legal actions.

Effect on New York Employers

For New York employers, the injunction means that, for the time being, the minimum salary necessary to qualify for the "highly compensated employee" exemption will remain at \$100,000 and at \$455 per week for the professional exemption.

New York, however, has always required a higher minimum salary threshold for employers that use the executive and administrative exemptions. Currently, the minimum salary threshold for these exemptions is \$675 per week (\$35,100 per year). In conjunction with New York's minimum wage increase that will take effect on Dec. 31, 2016, the New York State Department of Labor recently proposed increasing the minimum salary thresholds for such exemptions. Similar to the minimum wage increases, the salary thresholds will depend on employer size and location. The proposed salary thresholds for New York City employers, which are expected to be adopted next month, are:

- Large employers in New York City (11 or more employees):
 - \$825 per week (\$42,900 per year) on and after Dec. 31, 2016
 - \$975 per week (\$50,700 per year) on and after Dec. 31, 2017
 - \$1,125 per week (\$58,500 per year) on and after Dec. 31, 2018
- Small employers in New York City (10 or fewer employees):
 - \$787.50 per week (\$40,950 per year) on and after Dec. 31, 2016
 - \$900 per week (\$46,800 per year) on and after Dec. 31, 2017
 - \$1,012.50 per week (\$52,650 per year) on and after Dec. 31, 2018
 - \$1,125 per week (\$58,500 per year) on and after Dec. 31, 2019

Employers should review employees' salaries in December of each year to ensure that that no adjustments are needed to maintain the exemptions. Note that, in addition to being paid the requisite salary level, employees

must still perform the duties required for the executive and administrative exemptions to apply.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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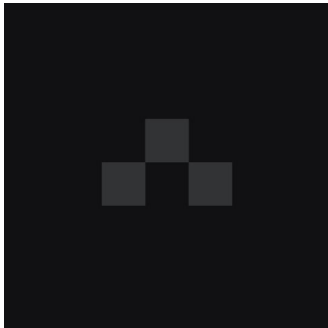
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