



MCGINNIS LOCHRIDGE

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Employment Alert - Overtime Rule Invalid

As earlier reported, twenty-one states and a broad coalition of Texas and national business groups filed lawsuits in federal district court in Sherman, Texas challenging the Department of Labor (“DOL”) overtime rule, which substantially increased the salary threshold for exempt executive, administrative and professional (EAP) employees. In November 2016, Judge Amos Mazzant enjoined the effective date of the overtime rule, and an appeal of that injunction is pending at the Fifth Circuit Court of Appeals.

Today, Judge Mazzant issued an order finding the overtime rule invalid. Essentially, Judge Mazzant determined that the new salary threshold in the overtime rule effectively would supplant the duties tests for EAP employees and thus, exceeded the DOL’s authority to define and delimit those white collar exemptions.

Finding that Congress unambiguously intended exemptions from overtime requirements to be determined by an employee’s duties, the court determined that the DOL’s overtime rule did not give effect to this intent because the new salary threshold would “categorical[d]y exclude those who perform ‘bona fide executive, administrative or professional capacity’ duties based on salary alone.” The court stated, “the Department does not have authority to use a salary-level test that would effectively eliminate the duties tests prescribed by Section 213(a)(1) [of the Fair Labor Standards Act].”

The court distinguished the current salary threshold (\$455 per week or \$23,660 annually) as permissible for “*identifying* categories of employees Congress intended to exempt” and a “floor to screen out ... obviously nonexempt employees.” Therefore, under Judge Mazzant’s order, employers may deny overtime pay for employees who meet the current salary test and satisfy the duties test for at least one of the EAP exemptions. Ordinarily, a federal agency would be expected to appeal an order finding its rule invalid. However, President Trump’s DOL has stated in briefing at the Fifth Circuit Court of Appeals that it will not defend the Obama Administration overtime rule. Therefore, it is unclear whether Judge Mazzant’s order will be appealed. The AFL-CIO attempted to intervene in the district court lawsuit, presumably to be able to appeal a decision it deemed adverse to its members. However, in today’s decisions, Judge Mazzant denied the AFL-CIO’s motion to intervene.

We will provide information on any material developments as soon as possible. If you have any questions regarding the new DOL overtime rule, please contact Christine F. Reynolds at creynolds@mcginnislaw.com or Eric A. Johnston at ejohnston@mcginnislaw.com and (512)-495-6000.