

Eli's Hospice Insider

Labor Law: Keep Your Eye On Overtime Rule Lawsuit

DOL files notice of appeal.

Your labor law compliance status ☐ and risk of employee lawsuits ☐ may rely on the outcome of a lawsuit working its way through federal court.

A **Department of Labor** final rule was set to change who qualified for the "white collar" executive, administrative, and professional (EAP) employee overtime exemption effective Dec. 1. The rule would have reset the minimum salary level needed to qualify for the exemption to \$921 weekly in contrast to the current \$455 weekly. On Nov. 22, Judge **Amos Mazzant** with the **U.S. District Court for the Eastern District of Texas** issued a ruling halting implementation of the rule.

Impact: DOL estimates 4.2 million workers currently ineligible for overtime, and who fall below the minimum salary level, would automatically become eligible under the final rule without a change to their duties, according to the decision.

The eleventh-hour ruling took many by surprise. "This case ... filed by 21 states in late September 2016 ... was seen by most authorities in the legal field as a 'Hail Mary,'" notes attorney **Eileen Maguire** of Indianapolis-based **Gilliland, Maguire and Harper** in analysis of the decision.

The ruling also paused the DOL final rule's automatic updates to the EAP salary level every three years, point out attorneys **Joseph Gross** and **Steven Moss** with law firm **Benesch**, in analysis of the decision.

Intact: The ruling also appears to leave standing the increase to "the minimum salary for the exemption for highly compensated workers from \$100,000 to \$134,000 annually," notes law firm **K&L Gates** in its analysis. "The district court's ruling does not address the highly compensated exemption."

Just temporary: Keep in mind that this ruling is not permanent, and gives the court more time to fully consider the arguments at issue. "The preliminary injunction preserves the status quo until the court determines the Department of Labor's authority to make the final rule as well as the validity of the final rule," **The Health Group** in Morgantown, W. Va. notes in its analysis.

Predicting the final outcome is dicey. But "it is more likely than not that the Court's final decision will look a lot like this preliminary ruling," expects the **National Association for Home Care & Hospice**. "However, there are no guarantees of that," the trade group says in its member newsletter.

"The ruling will also provide an opportunity for an early glimpse as to where the incoming Trump Administration may go on minimum wage and overtime issues that could include NAHC's efforts to restore the companionship and live-in exemptions," the trade group adds.

The rule left many employers unsure of whether to move forward with changes sparked by the rule, such as salary increases and reclassifications.

If you're one of the employers that decided to hold off on changes to bring you into compliance with the new rule, you may be concerned about a Dec. 1 DOL filing giving notice to appeal the preliminary injunction blocking the rule from taking effect. "If the Fifth Circuit rules in favor of the DOL, the Overtime Final Rule may be enforceable retroactively to its original effective date of December 1, 2016," Maguire warns.

But "there are strong arguments that employers should be exempted from complying with the new rules from December 1 ... until the date the injunction is lifted," notes law firm **Orrick** in analysis of the case. And while not guaranteed, the



DOL typically holds off on enforcement while an injunction is pending, note attorneys from the firm.