Advisory

NOVEMBER 2016

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Federal Court Issues Nationwide Injunction Putting New Overtime Regulations On Hold

In a surprising – many would say shocking – development, yesterday Judge Amos Mazzant of the U.S. District Court for the Eastern District of Texas issued a nationwide injunction barring implementation of the U.S. Department of Labor's new rules narrowing the scope of the Fair Labor Standards Act's minimum wage and overtime pay exemptions for executive, administrative and professional employees that were scheduled to go into effect on December 1. The new rules would have dramatically increased the salary threshold for exempt status from $455 per week ($23,660 annually) to $921 per week ($47,892 annually). In addition, the Department of Labor adopted an automatic updating mechanism whereby the minimum salary level for exempt status would increase every three years, with the first increase slated for January 1, 2020, so as to maintain the threshold at the 40th percentile of weekly earnings of full-time salaried workers in the nation's lowest wage region, currently the South. Now everything is up in the air.

The suit challenging the lawfulness of the new rule was brought by 21 states and consolidated with a subsequent action initiated by the Plano Chamber of Commerce and over fifty other business organizations. Judge Mazzant, an appointee of President Obama, agreed with the plaintiffs that in promulgating the revised regulations the Department of Labor exceeded the authority granted by Congress to "define and delimit" the statutory exemptions for executive, administrative and professional employees, often referred to as the white-collar or EAP exemptions. Focusing on dictionary definitions of the terms "executive," "administrative" and "professional" gleaned from mid-1930's contemporary sources (when the FLSA was enacted), the Court concluded that: "After reading the plain meanings together with the statute, it is clear Congress intended the EAP exemption to apply to employees doing actual executive, administrative, and professional duties. In order words, Congress defined the EAP exemption with regard to duties, which does not include a minimum salary level." The Court acknowledged that by delegating to the Department of Labor defining and delimiting authority Congress "g[a]ve the Department significant leeway to establish the types of duties that might qualify an employee for the exemption," but observed that "nothing in the EAP exemption indicates that Congress intended the Department to define and delimit with respect to a minimum salary level." Consequently, the Court reasoned, "the Department exceeds its delegated authority and ignores Congress's intent by raising the minimum salary level such that it supplants the duties test" for exempt status. The logical conclusion to be drawn from the opinion is that, in Judge Mazzant's view, the minimum salary component of the EAP exemption, which has been in effect since 1949, has always been unlawful since according to the Court the

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statute's plain language contemplates that the exemption will turn exclusively on an employee's duties. However, in a rather curious, seemingly contradictory footnote, Judge Mazzant cautioned that: "The court is not making a general statement on the lawfulness of the salary-level test for the EAP exemption. The Court is evaluating only the salary-level test as amended under the Department's Final Rule."

While the Court's rebuke of the Department of Labor is clear and definitive, the path forward for employers is paved with uncertainty. Presumably the Department of Labor will seek review from the U.S. Court of Appeals for the Fifth Circuit in the hopes that a higher court will see things differently and lift the injunction. However, absent a prompt resolution of any appeal -- that is, before inauguration day -- it remains possible that such an initiative could prove moot if the new administration elects not to press the matter. The fluidity of the situation suggests a wait-and-see approach may be the most prudent course of action at this juncture. Wiggin and Dana will, of course, follow up with alerts as events warrant. In the meantime, please reach out to your Wiggin and Dana contact person with any questions you may have regarding the status of the new regulations.