



New Overtime Rules on Hold: Texas Judge Indefinitely Delays Salary Increases

By: [Richard Glovsky](#) and [Sean Kilian](#)

On November 22, 2016, a Texas federal district court judge issued an order preliminarily enjoining the Department of Labor's (DOL) new overtime regulations. As a result, the regulations will not go into effect on December 1st, unless and until the district court, or the United States Court of Appeals for the Fifth Circuit or the United States Supreme Court, issues a superseding order.

As most employers now are well aware, the new overtime regulations would have raised the salary required to qualify for the executive, administrative, and professional (EAP) exemptions, from the current \$455 per week (\$23,660 annually) threshold to \$913 per week (\$47,476 annually). This change, which was expected to make over 4 million workers soon eligible for overtime pay, drew a legal challenge in federal court in Texas from twenty-one state governments and several business organizations.

The court's order focuses on the language of the Fair Labor Standards Act (FLSA), specifically the terms "administrative, executive, and professional." Considering the plain meaning of these terms and the surrounding text of the FLSA, the court concluded that Congress intended the EAP exemptions to apply based upon a determination whether a worker actually performs executive, administrative, or professional tasks. In the court's view, the new regulations conflict with this intent by over-emphasizing an employee's salary level, such that salary level would effectively supplant an analysis of an employee's job duties as the means of determining whether an employee is exempt. In short, the court found that the DOL overreached by dramatically raising the salary threshold.

The court's order is immediately appealable and the ultimate fate of the new regulations is uncertain. The Obama administration may soon appeal, and perhaps seek immediate review of the Texas court's ruling. President-elect Trump's administration, on the other hand, could decide not to pursue an appeal of the order, or to scrap the new regulations altogether.

For now, employers should follow this development closely and be prepared to act if and when the new regulations become effective. However, unless and until the regulations become effective, the current salary threshold will apply. Accordingly, employers that have acted to comply with the new regulations can now consider the delicate issue of whether and how to reverse course. The Labor & Employment Group at Locke Lord is available to assist employers in addressing these matters.

Richard Glovsky | 617-239-0214 | richard.glovsky@lockelord.com
Sean Kilian | 214-740-8560 | skilian@lockelord.com



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