

November 2016

Time to Stop Payroll? Texas Judge Blocks New White Collar Exemption Rules

On November 22, 2016, a U.S. District Court Judge in the Eastern District of Texas issued a [preliminary nationwide injunction](#) enjoining the federal Department of Labor's (DOL) [rule](#) changing certain aspects of the "white collar" exemptions and preventing them from going into effect on December 1, 2016. Generally, employees who perform executive, administrative, and professional duties and earn a minimum salary amount, are exempt from the minimum wage and overtime requirements under the Fair Labor Standards Act (FLSA) (commonly referred to as the "white collar" exemptions). The DOL's new rule had been set to essentially double the minimum salary for white collar workers, increasing it from \$455 per week (\$23,660 annually) to \$913 per week (\$47,476 annually), in addition to creating a mechanism whereby the salary threshold would automatically adjust every three years.

The emergency motion for a preliminary injunction, filed by 21 states, challenged the rule's lawfulness, the DOL's authority to enact the rule, and the lawfulness of the automatic salary adjustment mechanism. The Court held the DOL exceeded its Congressionally-delegated authority in enacting the rule. Under the FLSA, employees employed in a bona fide executive, administrative, or professional capacity are considered exempt; however, the salary threshold was created by DOL regulation. The Court held that the DOL, by significantly raising the salary threshold, had created a "de facto salary-only test" which categorically excluded employees who would otherwise be exempt under the FLSA. Therefore, the Court granted the preliminary injunction, which enjoins the DOL from implementing and enforcing the rule nationwide pending further order of the Court. Note that neither the new rule, nor the Court's decision, had any bearing on the "duties" aspect of the white collar exemptions; employees still must be performing executive, administrative, or professional duties, as defined by the law, to be classified as exempt. Additionally, the Court's decision did not impact any salary basis tests under state and local law.

As an initial step, employers will likely want to review any decisions made based on this new rule and determine how to best proceed, including communicating any compensation changes to employees consistent with local, state, or federal law requirements. Employers should consider consulting competent legal counsel for assistance.

For more information, or if you have questions about how the issues raised in this legal update affect your policies, practices, or other compliance efforts, please contact one of the following lawyers in the firm's [Labor, Employment, Benefits + Immigration Group](#).

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