

**DON'T MESS WITH TEXAS:
Department of Labor's Salary Hike Halted by Texas Judge**

By: Chris Agboli

On November 22, 2016, Judge Amos Mazzant of the Eastern District of Texas, Sherman Division, ordered a nationwide halt to the Department of Labor's (DOL) new wage and overtime requirements.¹ The DOL, in a controversial decision, abruptly changed the salary level for employees exempt from overtime "employed in a bona fide executive, administrative, or professional capacity." On December 1, 2016, the minimum salary for executive, administrative, or professional employees (EAP) exempt from overtime wages (a time and a half) was set to jump from \$455 per week (\$23,660 annually) to \$921 per week (\$47,892 annually).² This unprecedented hike was positioned to cause a massive 102% increase in the minimum salary of EAP employees exempt from overtime.

Just days before the hike, however, Judge Mazzant issued a 20-page opinion ordering a preliminary injunction. The injunction was sought by 21 different states hoping to curtail President Obama's mandate to the DOL to "modernize and streamline the existing overtime regulations for executive, administrative, and professional employees."³

Proponents of the DOL's wage hike regulation argue that the DOL has the inherent power to enforce a wage hike for EAP employees. The opponents argue, however, that the DOL exceeded its power in finalizing a regulation beyond the scope of its authority.

Judge Mazzant settled the issue in his opinion when he concluded that that the DOL's regulation "does not comport with Congress's intent. The broad purpose of 213(a)(1) was to exempt from overtime those engaged in executive, administrative, and professional capacity

¹ *Nev. v. U.S. Dept. of Labor*, No. 4:16-cv-00731, 2016 WL 6879615, at *1 (E.D. Tex. November 22, 2016).

² 81 Fed. Reg. 32,391

³ Presidential Memorandum of March 13, 2014; Updating and Modernizing Overtime Regulations, 79 Fed. Reg. 18,737 (Mar. 13, 2014).

duties.”⁴ Judge Mazzant, furthermore, found that the DOL’s regulation exceeded its defined powers and would cause “irreparable harm” if not enjoined.⁵

On December 1, 2016, the day the DOL’s regulation was set to take effect, the DOL appealed the Court’s preliminary injunction. The issue that must be addressed on appeal is the definition of the duties required for an employee to be considered an EAP employee. Judge Mazzant found that “[d]irectly in conflict with Congress’s intent, the Final [DOL] Rule states that ‘[w]hite collar employees subject to the salary level test earning less than \$913 per week will not qualify for the EAP exemption, and therefore will be eligible for overtime, *irrespective of their job duties and responsibilities.*’”⁶ Many states feared, along with Judge Mazzant, that without a clear definition of the duties required of an EAP exempt employee, all employers would be required to raise the wages of employees solely because of the wage increase, notwithstanding, the employee’s duties.

Prior to the implementation of the new regulation, the DOL estimated that 4.2 million workers that are currently ineligible for overtime, and fall below the minimum salary level, would automatically become eligible under the final rule without a change to their duties.⁷ Many diligent employers, however, already implemented the DOL’s changes for their employees prior to the Court’s preliminary injunction. The decision thus becomes for the employers that have already complied with the DOL’s ruling to either continue compliance with the enjoined DOL regulation and allow a wage hike for some employees, or revert back to the old minimum salary requirement for EAP employees exempt from overtime.

⁴ *Nev. v. U.S. Dept. of Labor*, No. 4:16-cv-00731, 2016 WL 6879615, at *13 (E.D. Tex. November 22, 2016).

⁵ *Id.* at *15.

⁶ *Id.* at *12.

⁷ *Id.* at 14 (citing *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees*, 81 Fed. Reg. 32,391, 32,405 (May 23, 2016)).

With President-Elect Donald Trump taking the oath of office in just a few weeks, this issue will likely be resolved shortly. The DOL, with Trump as president, can simply change its rule, or wait for the court's ruling on appeal. Whichever course is taken, the DOL has certainly opened the door to a reevaluation of EAP employees exempt from overtime.

Steele Law Group offers FREE audits to companies and employers who are attempting to navigate the right course of action to take when dealing with similar changes to the law. If you have questions or concerns about changes to the employment landscape and overtime procedures contact Steele Law Group PLLC at One Allen Center 500 Dallas, Suite 3440, Houston, Texas 713-659-2600 or email me at cagboli@steele-law-group.com. Our firm has an abundance of experience in handling employment matters (including overtime issues and HR audits), and is ready to help you.