

School Law Update

SEPTEMBER 8, 2017

Department of Labor Overtime Rule Halted

BACKGROUND

As our firm has reported on recently in our August 2017 School Law FYI, there have been some new developments involving the Department of Labor (DOL) and the regulations related to overtime exemptions under the Fair Labor Standards Act (FLSA). As many employers know, the final regulations that were issued in 2016 would have made a number of changes to the overtime exemptions, including increasing the salary threshold for key exemptions from \$455 to \$913 per week.

Although these regulations were finalized under President Obama and were to take effect on December 1, 2016, a federal district court judge in Texas issued a temporary injunction in November 2016, effectively preventing the DOL from enforcing these regulations nationwide. *See Nevada et al. v. United States Dep't of Labor*, 218 F. Supp. 3d 520 (E.D. Tex. 2016). The DOL immediately appealed the temporary injunction to the U.S. Court of Appeals for the Fifth Circuit.

While the appeal was pending, the DOL asked the federal district court to wait to issue its final decision until the appeal of the temporary injunction was decided. The district court denied that request. Before the Court of Appeals could issue its decision, the district court judge ruled on August 31, 2017, and invalidated the final regulations issued under President Obama.

FEDERAL DISTRICT COURT DECISION INVALIDATES RULES

In short, the district court ruled against the DOL and granted summary judgment to the opposing parties. The judge held that the updated salary level test in the final regulations was inconsistent with the intent of Congress. Congress gave the DOL the authority to issue regulations that define the meaning of the exemptions. However, by setting such a high salary level for the exemptions (generally \$913 per week), the court ruled that the DOL overstepped its authority.

The district court did not say that the DOL could not set any salary level to qualify for exempt status. Instead, the decision stated that the 2016 final regulations made overtime status depend predominantly on the minimum salary level, which effectively supplanted any analysis of the employee's job duties. Thus, the DOL's final regulations did not follow Congressional authority and were invalid.

MOTION TO DISMISS APPEAL OF THE PRELIMINARY INJUNCTION

Following the decision by the federal district court, the DOL filed an unopposed motion with the U.S. Court of Appeals for the Fifth Circuit, asking the Court of Appeals to dismiss the appeal of the temporary injunction. The DOL argued that the appeal is now moot because the district court invalidated the regulations. On September 6, the Court of Appeals granted this motion to dismiss.

NOW WHAT?

In light of the decision by the district court invalidating the final overtime regulations and the dismissal of the appeal, the 2016 final regulations that increased the salary levels are invalid. As a result, the regulations as they existed prior to the 2016 final regulations are still in effect and will likely now stay in effect until further rulemaking action by the DOL under the Trump administration. For now, employers can continue to rely on the existing regulations (including the salary level of \$455 per week).

The DOL under the Trump administration issued a Request for Information in June 2017, seeking input from the public concerning the regulations related to the exemptions. In seeking public comments, the DOL acknowledged that the salary level in the 2016 final regulations was likely too high. Responses to the Request for Information are due on September 25, 2017. Indications from the new DOL Secretary Alexander Acosta are that the DOL will be looking to raise the salary level for exempt status, but will likely propose a salary level in the mid-\$30,000 range rather than the \$47,476 that was included in the 2016 regulations.

We will keep you apprised of key changes in this process.

This article was updated on September 8, 2017 to reflect that the Fifth Circuit Court of Appeals has granted the motion to dismiss the appeal.

Disclaimer: Boardman & Clark LLP provides this material as information about legal issues. It does not offer legal advice with respect to particular situations and does not purport that this newsletter is a complete treatment of the legal issues surrounding any topic. Because your situation may differ from those described in this Newsletter, you should not rely solely on this information in making legal decisions. In addition, this material may quickly become outdated. Anyone referencing this material must update the information presented to ensure accuracy. The use of the materials does not establish an attorney-client relationship, and Boardman & Clark LLP recommends the use of legal counsel on specific matters.

RICHARD F. VERSTEGEN | (608) 286-7233
DOUGLAS E. WITTE | (608) 286-7529
MICHAEL J. JULKA | (608) 286-7238
JAMES K. RUHLY | (608) 283-1738
EILEEN A. BROWNLEE | (608) 822-3251

JOANN M. HART | (608) 286-7162
STEVEN C. ZACH | (608) 283-1736
M. TESS O'BRIEN-HEINZEN | (608) 283-1798
BRIAN P. GOODMAN | (608) 283-1722