

# Federal Judge Blocks FLSA Rule Extending Overtime Eligibility

November 23, 2016

As many have probably heard, the U.S. District Court for the Eastern District of Texas has enjoined the Department of Labor (DOL) from implementing the new Fair Labor Standards Act (FLSA) regulations. In fact, this may have an even bigger impact once all is said and done.

The federal court not only found the new regulations improper because of the new threshold limits (and the automatic adjustments every three years), but questions whether the DOL has had any authority at all ever to set ANY salary threshold for the exemptions.

The court looked at the FLSA and determined that there is nothing in it to set any salary threshold, at all, for the exemptions. The FLSA only requires an employee to perform certain kinds of work (i.e., executive, administrative and professional, etc.) and be paid on a salary basis (or in some cases, fee basis) to be exempt from the overtime requirements. In other words, the court leaves open the question of whether the prior regulations' threshold of \$455 was proper!

So, what to do....?

Of course each employer's situation is different but, in general, if there are some employees who have been misclassified because their duties do not support the exemption, employers may still want to fix their past errors and blame it on the regulations and uncertainty of how things will end up. This is still a good opportunity to reclassify an employee as non-exempt (hourly) without tipping him/her off that he/she should have been earning overtime all along.

But, if an employer was changing an employee's classification solely because of the new threshold limit, it is suggested that you wait on making that change. And, if you were going to increase an employee's salary to keep the person exempt, you may want to wait on that as well. However, be prepared that you may create a morale problem by announcing that anticipated raises are going to be rescinded.

If you have any questions about what is best for your business, please seek advice from your legal counsel.