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Labor and Employment Alert: It Ain't Over Till It's Over ... States and Business Groups Sue DOL to Stop Overtime Rules

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CLIENT ALERT | 9.21.2016

The U.S. Department of Labor's (DOL) new overtime rules become effective on December 1, 2016. On that day, the salary threshold to be considered an overtime-exempt employee will double from the existing \$455 per week to \$913 per week (or \$47,476 per year). The salary for highly compensated individuals will increase to \$134,004. For the first time since the Fair Labor Standards Act (FLSA) was enacted in 1938, these salary levels will now automatically increase for inflation every three years.

On September 20, 2016, 21 states sued the DOL, contending that the DOL overstepped its authority when it adopted the new overtime rules. Along with lead plaintiffs Texas and Nevada, the states of Alabama, Arizona, Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Nebraska, New Mexico, Ohio, Oklahoma, South Carolina, Utah, and Wisconsin have joined the suit. That same day, more than 55 Texas and national business groups, led by the U.S. Chamber of Commerce, filed a similar lawsuit against the overtime rules. Both suits are filed in the Eastern District of Texas and were assigned to Judge Amos Mazzant – who was appointed by President Obama in 2014.

Both lawsuits attack the automatic salary increases. The states point out, for example, that when the DOL last amended its overtime regulations in 2004, the DOL expressly rejected automatic increases as “contrary to congressional intent and inappropriate.” The automatic indexing is alleged to violate the Administrative Procedure Act, which generally requires that agency rule changes be accomplished through notice-and-comment procedures.

The suits further contend that Congress did not intend an employee's salary level to substitute for distinguishing between overtime-eligible and overtime-exempt employees. Yet in adopting such a high salary threshold, the DOL has ignored the text and meaning of the FLSA which defines whether an employee is a bona fide executive, administrative, or professional employee in terms of the duties an employee is actually performing. The Chamber, for example, asserts

that the overtime rule “raises the minimum salary threshold so high that the new salary threshold is no longer a plausible proxy for the categories exempted from the overtime requirement by Congress.”

Finally, the states contend that the overtime rule violates the Constitution’s Tenth Amendment because it “infringes upon state sovereignty and federalism by dictating the wages that States must pay to those whom they employ...” As a result, the DOL’s salary basis test “will wreck State budgets” as states eliminate or alter employment relationships, services, and programs in order to pay for the increased costs.

The suits were just filed and are pending before a judge appointed by the president whose administration created the new overtime rules, so the future of the litigation is uncertain. We will report on future developments. In the interim, contact your Vorys lawyer if you have questions about the DOL’s pending overtime rule and its impact on your business.