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Labor and Employment Alert: New DOL Overtime Rules Blocked!

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In a surprising decision, a federal judge in Texas blocked the U.S. Department of Labor's (DOL) new overtime rule from taking effect on December 1. For now, the decision hands a victory to private-sector and public-sector employers nationwide. The new overtime rules would have increased the minimum salary level for most overtime pay exemptions from \$455 per week to \$913 per week effective December 1. But, for now, that increase is blocked, and the current minimum salary for most of the overtime pay exemptions remains \$455 per week.

The federal judge determined that the new DOL salary test equated to a de facto "salary-only" test that was inconsistent with the Fair Labor Standards Act (FLSA) and inconsistent with the authority that Congress had granted the DOL. The Texas federal court found that the FLSA statutory language contemplates that the "duty test" be a significant part of any overtime pay exemption. The judge found that the DOL's new salary test diluted the duty test, contrary to the FLSA's statutory language.

The decision emphasizes how significant the duty test is for any overtime pay exemption. For now, the following three tests remain the tests for the overtime pay exemptions for executive, administrative, and professional employees:

- Employees are paid on a salary basis;
- Employees are paid at least a salary of \$455 per week; and
- Employees perform exempt duties as defined by the current DOL regulations.

The federal court decision is a reminder that the duties test is a significant part of any exemption determination. Consequently, employers should pay particular attention to the duties test in determining whether a particular job function is entitled to overtime pay or is exempt from overtime pay.

Because the court blocked the new salary level, employers who were going to implement salary increases on December 1 have several options, including:

- Placing those increases “on hold” and adopting a wait-and-see approach; or
- Implementing those increases if they have already been communicated.

As to the future, the DOL could appeal the federal court ruling to the U.S Court of Appeals. Or, the new presidential administration or the Congress could take matters into its own hands. We will continue tracking these developments as they occur.