

Insights: Alerts

Judge Issues Order Invalidating DOL Exempt-Employee Salary Rule

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Last November, Judge Amos Mazzant of the U.S. District Court for the Eastern District of Texas issued a preliminary injunction in the case of *Nevada v. U.S. Dep't of Labor* that put on hold the U.S. Department of Labor's Final Rule modifying the salary test for the executive, administrative, and professional exemptions under the Fair Labor Standards Act. That Rule would have increased the salary requirement for these "white collar" exemptions from \$455 per week to \$913 per week, thereby excluding approximately 4.2 million currently exempt salaried workers from the exemptions. In a new development on August 31, 2017, Judge Mazzant issued a final Opinion and Order in the case granting summary judgment to the plaintiffs and invalidating the rule entirely.

By originally enjoining the Rule, which was issued by the Department of Labor under President Obama, Judge Mazzant blocked its implementation, which had been scheduled for December 1, 2016. This created some degree of relief but also some confusion for employers who wrestled with whether to change employees' status from exempt to non-exempt or greatly increase some employees' salaries in order to preserve their exempt status. This preliminary decision was appealed by the Department to the Fifth Circuit Court of Appeals, but that appeal has been in a state of limbo with the change in administrations as the current Department pushed for delay while considering what position the Trump administration would take.

The August 31 decision is a definitive statement that the Rule was invalid. Judge Mazzant found that the significant increase in the salary test effectively eliminated Congress's unambiguous intent of creating exemptions based on employees' duties rather than a specific salary level. Thus, the rule was invalid and unenforceable. The Judge held open the concept that some salary test was appropriate and, quoting from his ruling on the injunction, stated that if the Rule had merely raised the salary level based on inflation rather than almost doubling the existing level, "we would not be here today."

The August 31 decision creates some confusion regarding the status of the case. With the appeal of the injunction still active, the Court of Appeals may be asked to rule on the propriety of the injunction without regard to this final Order, but that seems unlikely. This final Order may be appealed by the Department, but that too seems unlikely. It is more likely that the Department, acting on the direction of the Trump administration, will not seek any further appeal but will go back to the drawing board on an update of the salary test. Based on Judge Mazzant's reasoning, an amended rule that raises the salary test 20 or 25 percent would likely be enforceable. At this point, the message to employers is to sit tight and anticipate a likely more modest increase in the salary test at some point, but do not make any specific changes until we get a clear path forward.

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