

The DOL's Final Rule On Life Support?

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Earlier this year, the Department of Labor (DOL) issued its long-awaited [final rule updating the salary level for workers](#) who are exempt from the overtime requirements of the Fair Labor Standards Act (FLSA). The final rule, also commonly known as the overtime rule, was supposed to go into effect on Dec. 1, 2016. As readers of this blog are aware, the update was met with fierce opposition from business groups and employers.

In September, a group of 21 states and various business groups filed suit in federal court in Texas to block implementation of the final rule. On Nov. 21, 2016, – at the last minute – the court issued a [nationwide injunction precluding enforcement of the overtime rule](#). The DOL currently is appealing this ruling to the U.S. Court of Appeals for the Fifth Circuit and a flurry of procedural activity has occurred the last few weeks of the year.

First, the DOL has asked the Fifth Circuit to enter an expedited briefing schedule on the matter – presumably to ensure that the case will be submitted to the Fifth Circuit for a decision before Andrew Puzder can be confirmed as the new Secretary of Labor. Next, the AFL-CIO has asked to intervene as a party to the lawsuit, apparently fearing that the Trump Administration will abandon the appeal once it takes charge. Lastly, just before the holiday break, Sen. Bernie Sanders and other members of Congress filed an amicus brief in the Fifth Circuit in support of the final rule.

While the new administration has not issued any formal pronouncements about the final rule, Mr. Puzder has not been shy about voicing his concerns over its reach: he believes it will add to the regulatory maze that already burdens employers; will leave companies that rely on the white collar overtime exemptions at a competitive disadvantage; and will impair the upward mobility of workers since many management-level employees will be reclassified as hourly workers. In other words, he's not a fan of the policy.

Given these statements and the Trump Administration's anticipated employer-friendly viewpoint, many proponents of the overtime rule believe the new administration is likely to scrap it entirely. While these procedural machinations wind their way through the courts, the injunction stays in place. Of course, this does not mean that employers can go back to sleep, safe in the assumption that they need not worry about increasing salary levels for exempt employees or converting affected employees to hourly status. If the Fifth Circuit reverses the injunction, a new date may be imposed for the final rule to go into effect.

Also, while the new administration is dissatisfied with the final rule in its current form, much of that concern stems from the dramatic shift in the dollar amount of the salary level increase adopted by the DOL in the overtime rule,

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not whether the amount should be increased. As a result, it is possible the new administration may replace the final rule with a more gradual stair-step approach.

Either way, employers with workers who would be affected by the final rule should consider staying current with the latest developments and keep on top of any changes in the regulations that could affect how they classify their workers.