

New Overtime Rules Delayed

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Greenbaum, Rowe, Smith & Davis LLP Client Alert

December 2016

On November 22, 2016, a United States District Court in Texas issued a nationwide injunction stopping, at least for now, the implementation of the highly anticipated changes to federal overtime requirements that would have increased significantly the number of employees who are eligible for overtime pay if they work more than forty hours in a workweek. The Court's decision to halt implementation of the new rules, which were set to take effect on December 1, 2016, is only a preliminary ruling that has already been appealed by the U.S. Department of Labor. Because the recent decision is not the final word on this issue, it is not clear when, if at all, the new rules, in one form or another, will go into effect. Accordingly, it is important that employers stay apprised of any developments in this area.

The new rules would have more than doubled the minimum salary required under federal law for exempt "executive," "administrative" and "professional" employees — from \$455 per week or \$23,660 per year, to \$913 per week or \$47,476 per year. Also, under the "highly compensated employee" exemption, the minimum salary threshold was set to increase from \$100,000 per year to \$134,004 per year. As a result of the Court's ruling, however, the new rules did not take effect as scheduled on December 1.

Although the future of the new overtime rules is uncertain, the fact remains that federal and state government agencies will likely continue to aggressively pursue employers who fail to correctly classify their workers. Also, while implementation has been delayed, it is important to note that the new rules only concern the increased amount of wages that must be paid to certain workers to classify them as exempt employees. The delayed rules do not address worker classification issues that are unrelated to rates of pay, including whether a worker is an employee or an independent contractor. Thus, notwithstanding the uncertainty surrounding the new overtime rules, employers would be well advised to review the classification of all workers, especially those who are currently classified as independent contractors, treated as leased employees, or

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who may otherwise perform services in a capacity other than as an employee, to determine if they should appropriately be classified as W-2 employees.

With regard to those workers properly classified or reclassified as employees, a determination must then be made whether each worker is entitled to overtime pay for hours worked in excess of forty in a workweek. An employer's failure to properly classify workers could result in significant financial liability including, for example, back pay, back payroll taxes, interest and penalties. In addition, workers who are reclassified as employees could be entitled to retirement and health benefits and certain other employer-provided benefits that are not provided to independent contractors.

To learn more about overtime rules or other wage and hour issues, or if you have questions regarding their potential impact on your business operations, please contact the authors of this alert, **Thomas C. Senter** and **Lisa J. Clapp**.