

Federal Court Blocks Salary Increase

Antonio Caldarone
11.29.2016

Late yesterday afternoon a federal court judge in Texas issued an injunction blocking the U.S. Department of Labor rule that was to raise the salary threshold for exempt employees from \$455 per week to \$913 per week. The rule was to go into effect on December 1, 2016. It is on hold for now. The injunction is nationwide; therefore, it applies to all employers covered by the Fair Labor Standards Act. Although yesterday's decision does not mean that the rule is invalid, one of the considerations the court had to make was whether there was a likelihood that the rule will be invalidated. The court found that there was such a likelihood. The decision only means that the rule will not go into effect until the court has an opportunity to decide whether it is valid. The court will be ready to consider the legal arguments as soon as next week. However, it is not known when the court will decide the validity of the rule. While employers are not required to increase the salary level on December 1, 2016, it is unclear whether the rule will eventually go into effect. Even if the court invalidates the rule, the U.S. Department of Labor can appeal the injunction, and there can be further appeals of the court's ultimate decision on the validity of the rule.

In the meantime, employers should determine whether they will move forward with their plans to comply with the new rule, or put those plans on hold. Careful consideration should be made when deciding whether to move forward, such as the impact on employee relations if the salary increases or re-classifying employees as exempt have been communicated, the impact of "undoing" the administrative processes that

Attorneys

Antonio Caldarone

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have been put in place to comply like timekeeping, payroll and human resources, and how to address employee questions about the employer's decision to move forward or not because the court's decision is likely to be widely reported creating heightened awareness among employees. Finally, this ruling does not change the fact that employees still must meet the all important "duties" test to be properly classified as exempt. This decision may be a victory for opponents of the new rule, but the validity of the rule still must be decided, and there are many opportunities for appeal, which means that the uncertainty of the rule's ultimate fate will continue for now.

The Fast Laner will continue to monitor this case and its aftermath and provide additional developments as they emerge.