

DOL Overtime Regulation Enjoined: Now What?

Last evening, United States District Judge Amos L. Mazzant, III, issued a nationwide injunction from his federal court in Texas at the behest of the State of Nevada and twenty other states. Judge Mazzant enjoined the implementation and enforcement of the Department of Labor's new overtime regulations scheduled to go in effect on December 1, 2016. More information about Judge Mazzant, an Obama appointee, may be found here. [Honorable Amos Louis Mazzant, III](#). You may read the decision for yourself here. [Memorandum Opinion and Order](#).

The crux of Judge Mazzant's order is that the Department of Labor exceeded its authority when it issued its regulation requiring a salary test of \$47,476 in order to meet the definition of "exempt" under the FLSA. Judge Mazzant said, "The [DOL's] role is to carry out Congress's intent. If Congress intended the salary requirement to supplant the duties test, then Congress, and not the Department, should make that change."

WHAT IS THE SIGNIFICANCE OF A PRELIMINARY INJUNCTION?

A preliminary injunction is not a final order. It does not repeal the Department of Labor's regulation. It does not change the regulation. It does not conclusively resolve the legality of the regulation. What it does, and it's a big thing that it does, is that it blocks the regulation from coming into effect pending further court review. We expect the Department of Labor to appeal this order to the Fifth Circuit Court of Appeals which may or may not affirm Judge Mazzant's order.

WHAT SHOULD EMPLOYERS DO NOW?

This is an unusual example of procrastinators winning. Employers who were diligent and prepared, and who are ready to roll out a new compensation model and/or a messaging campaign with respect to the December 1 regulation, have little choice but to move forward with their initial plan. To back track now may be administrative infeasible along with a blow to employees' morale.

Clingen Callow & McLean, LLC

For those employers who have delayed implementing the necessary steps to comply with the December 1 regulation, there is no reason to change course now. Put another way, procrastinating employers, (or farsighted employers), should take a wait and see approach. There are many forces arrayed against the December 1 regulation including Judge Mazzant, a relatively conservative Fifth Circuit Court of Appeals, President Elect Trump, and a Republican Congress.

Our final word of advice is this. Every single FLSA case this firm has ever litigated in court had nothing to do with the salary basis test and always involved the duties test. Whether employers choose to meet or not meet the \$47,476 annual threshold is a pretty easy decision. But now is as good a time as any to analyze the duties that your exempt employees are performing to ensure that they are legitimately classified as exempt from overtime.

If you have any questions about the matters addressed in this *CCM Alert*, please contact the following CCM author or your regular CCM contact.

Ross I. Molho
Clingen Callow & McLean, LLC
2300 Cabot Drive, Suite 500
Lisle, Illinois 60532
www.ccmlawyer.com
(630) 871-2614

The author, publisher, and distributor of this CCM Alert is not rendering legal or other professional advice or opinions on specific facts or matters. Under applicable rules of professional conduct, this communication may constitute Attorney Advertising.

© 2017 Clingen Callow & McLean, LLC. All rights reserved.

ccmlawyer.com

Clingen Callow & McLean, LLC