

Update: Controversial Overtime Rules Temporarily Halted

11.10.16 | Linda J. Rosenthal, JD



UPDATE (11/22/16):

A federal district judge in Texas has issued a preliminary injunction this afternoon temporarily barring implementation of this new overtime rule which had been scheduled to begin on December 1, 2017. The ruling affects all 50 states, not just the 21 states whose attorneys general sued to block the rule. Here is the 20-page order granting the preliminary injunction.

On May 18, 2016, the United States Department of Labor announced final overtime regulations that will – if they go into effect as scheduled on December 1, 2016 – dramatically increase compensation for many employees nationwide.

These complex rules apply to the business sector as well as to many nonprofits. Business groups are, predictably, opposed to the new mandate. Reaction in the charitable community has been mixed. While there is support for improving wages and benefits for workers, many nonprofits worry about the financial drain from these new compensation obligations.

Against this background, there are significant developments on several fronts that could result in halting, or at least delaying, implementation of the new overtime requirements on time.

UPDATE:

The results of Tuesday's election will likely mean these changes will be delayed (per a favorable preliminary injunction) or will be repealed in late January 2017.

Congressional Efforts to Block the Regulations

“Three tactics are available to Congress for attempting to prevent the new regulations from going into effect: 1) adopting a resolution of disapproval under the Congressional Review Act; 2) enacting specific legislation, such as the Protecting Workplace Advancement and Opportunity Act (S. 2707 and H.R. 4773), which would nullify the proposed rule, among other things; or 3) attaching a rider to an appropriations bill to block enforcement of the rule for a year. All three actions require either the President’s approval (which is unlikely, given that the proposed rules are coming from his Administration) or sufficient votes (two-thirds of both the House and Senate) to override his expected veto.”

Bill to Delay Overtime Rule Passes House

On September 28, 2016, a bill related to these overtime regulations – H.R. 6094 – passed the House of Representatives. It delays the effective date until June 1, 2017. Introduced by Rep. Tim Walberg (R-MI) on September 21, 2016, there were numerous co-sponsors. In particular, small businesses expressed support; they argued that the original deadline would cause them to lay people off just before Christmas. H.R. 6094 passed by a vote of 246-177.

On September 28, 2016, Sen. James Lankford, R-Okla., introduced a bill to delay the overtime rule in the Senate. Separately, on September 29, 2016, H.R. 6094 was received in the Senate and placed on the Senate Legislative Calendar.

The Obama Administration has issued a written statement indicating the President will veto any such legislation that reaches his desk. It does not appear at this time there are enough votes to override the threatened veto.

Two Lawsuits Seek to Block the Overtime Regulations

Another challenge to the overtime regulations has come in connection with two separate federal lawsuits filed on September 20, 2016. “There are similarities in the plaintiffs’ legal reasoning, but there are also differences.” In both cases, plaintiffs seek to have the Labor Department’s regulations thrown out entirely.

Plaintiffs in the first action are a coalition of 21 states: Alabama, Arizona, Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Nebraska, Nevada, New Mexico, Ohio, Oklahoma, South Carolina, Texas, Utah, and Wisconsin. They assert “that Congress does not have the authority to dictate to states how, or how much, they must pay their state employees.”

They argue also that “Congress gave too much FLSA rule-making power to the Labor Department.”

Plaintiffs in the second lawsuit are are business groups. They assert that the Labor Department was “arbitrary and capricious,” ignoring evidence when designing the rule, and that the new threshold is so high that “it is no longer plausible to satisfy the minimum salary cutoff for many individuals who are otherwise bona fide EAP (executive, administrative, or professional) employees.”

In order to block the new regulations by the December 1st effective date, the plaintiff-states have filed an emergency motion for preliminary injunction which has been set for hearing in mid-November, 2016. We’ll keep track of this potentially important development.

Petition Filed by Business Trade Group

A third formal challenge concerning the overtime regulations involves a formal petition by The National Federation of Independent Business (NFIB) to the Department of Labor for an extension of the December 1, 2016 deadline. The trade group asserts there is insufficient time to comply. The Administrator of the Wage and Hour Division at the Department of Labor, Dr. David Weil, quickly rejected the NFIB petition. It's unclear if the NFIB will pursue the matter further.