

What's the Latest with the Overtime Rules?

04.04.17 | Linda J. Rosenthal, JD



Back in May 2016, millions of Americans were handed a very large raise in pay, to be effective on December 1, 2016. It was all because the United States Department of Labor announced final overtime regulations to dramatically increase the number of employees nationwide eligible to receive time-and-a-half when they have to work long hours.

This package of revised regulations altered the –

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compensation requirements relating to which employees may be treated as exempt under the Fair Labor Standards Act's (FLSA) overtime and minimum wage requirements under the “white collar” exemptions. Once effective, the minimum salary threshold you would have had to pay in order to characterize an employee performing the requisite work as exempt would have increased from \$455 to \$913 per week, which annualizes to \$47,476 (up from \$23,660 per year). Also, this amount would have been “updated” every three years (meaning that it would have likely increased with each update) with the first update scheduled for January 1, 2020.

These new overtime rules apply to businesses as well as to many nonprofit employers. Reaction in the charitable community has been mixed. There is support for improving wages and benefits for workers – and this increase is a huge “pay raise” for many employees – but many nonprofits worry about the financial drain from these new compensation obligations.

Several Challenges Launched

The Obama Administration expected some pushback before the December 1, 2016 scheduled effective date from business and GOP groups. The most successful challenge came from a group of 21 state attorneys general who filed suit in federal court, asserting that the DOL exceeded its authority in changing the compensation cutoff amount. On November 22, 2016, a federal district judge in Texas issued a preliminary injunction with nationwide effect. The judge wrote that it was “improper for the USDOL to adopt a salary test that categorically excludes a substantial number of workers who meet the exemptions’ duties-related requirements.”

Under ordinary circumstances, the Administration would undoubtedly go forward with an appeal of the injunction. But this has been no ordinary time; the November 8th election signaled a likely possible – even likely – reversal of any and all Obama programs and projects after January 20, 2017. Contrary to some predictions, the Obama Administration filed an expedited appeal to the Fifth Circuit Court of Appeals, with a request for expedited briefing granted. Meanwhile, the originally scheduled effective date had come and gone. Some employers had already gone ahead and made changes to be in compliance with the final DOL regulation issued last May. A reversal of what amounts to a substantial increase in pay for many employees is not a practical option.

Uncertainty Ahead

On January 20, 2017, the Trump Administration at least nominally stepped into the shoes of the Department of Labor as appellant against the GOP state attorneys general.

The latest development is intriguing. Instead of quickly and definitively withdrawing support for the federal government position – like Jeff Sessions’ Department of Justice did in connection with a Texas voting rights case – the new Administration asked for a continuance of the due date of its brief, in order to give “new personnel” time to evaluate the case.

Of course, the first pick for new Secretary of Labor withdrew his name from consideration. It is fairly well-known that Mr. Pudzer has not been a supporter of increasing worker pay. The second nominee, Alexander Acosta, has not yet been through the Senate confirmation process where he will undoubtedly be asked questions on this topic.

There are other possible avenues open to the new Administration if it wants to get rid of these final overtime regulations, but immediate cancellation may not be an option. Since final regulations have been issued, the process of canceling it is subject to a time-consuming process involving public notice and opportunity for public comment.

It’s also not a sure thing that the official GOP position is to oppose any and all increases in the overtime eligibility rules. In the last session of Congress, there was support for scaling back the new regulations somewhat but not entirely – or delaying its implementation to give businesses more time to adjust.

State Rules May Apply

Even if the new federal overtime rules never take effect, the overtime-eligibility cutoff amount in some states is already considerably higher than the existing federal cutoff of \$23,660. In California, for instance, the state salary threshold is \$41,600. Also, that amount is “increasing each year along

with the minimum wage” until 2022. The new federal rules would only have a minimal impact.

Conclusion

“The outcome, one way or the other, will affect many employers, including some nonprofits, around the nation. As the December 1st deadline was approaching, employers were advised to take steps to implement the rules, and some did. There may be legal hurdles to remove these substantial increases in compensation and there will certainly be worker upset if pay increases are revoked.” We’ll monitor this situation and update when there are significant developments.