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## Workplace Law Client Alert

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November 23, 2016

# WHAT DOES THE TEMPORARY OVERTIME RULE INJUNCTION MEAN?

## Injunctions Are Temporary; Employers Should Take Steps to Reduce the Risk of Overtime Liability

**A**s we reported yesterday, the U.S. District Court for the Eastern District of Texas enjoined the Department of Labor from implementing a new rule that would have increased the minimum salary requirement for exemption from the Fair Labor Standards Act's overtime requirement from \$455 to \$913 per week. The new rule would have impacted an estimated 4.2 million workers.

The injunction is nationwide in scope and thus impacts all employers. However, a temporary injunction means exactly what it says – *it is temporary in nature. There is no guarantee that the injunction will not be lifted in the future.* Even if the District Court converts the temporary injunction to a permanent injunction, the decision could be overturned on appeal.

Employers are now faced with difficult business decisions about whether to go forward with planned

changes or to rescind changes already implemented. We advise employers to take the following steps to reduce risk of overtime liability:

- Complete internal audits of exempt positions and pay practices.
- Proceed with updating/reclassifying positions to non-exempt where the duties no longer meet the criteria specified by the law to be exempt from overtime.
- Decide whether to rescind or suspend any changes to pay or duties implemented to comply with the new rule.
- Decide whether to rescind or suspend any reclassification of employees from exempt to non-exempt status implemented to comply with the new rule.

- Review your time keeping practices and policies and implement accurate time keeping procedures for all potentially impacted employees.

Employers are not currently required to comply with the new rule. Compliance will mitigate risk if the rule is ultimately implemented, but at a cost.

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**At a minimum, we recommend keeping accurate time records for all potentially impacted employees.**

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Unfortunately, we have no crystal ball as to the future of the new rule. At a minimum, we recommend keeping accurate time records for all potentially

impacted employees. If the rule goes into effect, you will be prepared with your first line of defense.

The case continues in Texas, including the parties' pending motions for Summary Judgment. The Court will then have the opportunity to rule on the merits of the case and decide whether to convert the temporary injunction to a permanent injunction or lift the injunction entirely. The Court may take the matter under advisement and issue a ruling several weeks later. Such a delay may move the matter into the term of the new administration, which has not supported the rule.

We will continue to monitor the status of the proceedings and report on future developments.

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