Akin Gump
STRAUSS HAUER & FELD LLP

Labor and Employment Alert

November 23, 2016

Key Points

- A federal district court in Texas has issued a preliminary injunction barring the Department of Labor from implementing its new $47,476 minimum salary level for executive, administrative and professional employees.
- The court also enjoined enforcement of the new regulatory provision that would have automatically updated the salary level every three years.
- The injunction is not permanent, but is based on the district court's conclusion that there is a "substantial likelihood" that the state and private plaintiffs will ultimately prevail on their challenge to the new rules.

On November 22, 2016, a federal district judge in the Eastern District of Texas entered a preliminary injunction barring the U.S. Department of Labor (DOL) from "implementing and enforcing" new salary regulations issued by the DOL in May 2016. The new regulations raised the minimum salary required to qualify as an exempt executive, administrative or professional employee from $455/week ($23,660 annually) to $913/week ($47,476 annually). The revised regulations also (1) raised the minimum salary level for the "highly compensated exemption" from $100,000 to $134,004; (2) automatically updated the minimum salary level every three years, beginning in 2020; and (3) allowed employers to use bonuses and other incentive payments to satisfy up to 10 percent of the minimum salary requirement. The revised regulations did not impact the duties requirements of the regulations. The DOL's new salary requirements were scheduled to become effective December 1, 2016.

Several states and business interest groups filed challenges to the new regulations, arguing that they were contrary to the plain language of the Fair Labor Standards Act (FLSA) and exceeded the DOL's authority. The states also sought a preliminary injunction enjoining enforcement of the regulations pending final disposition of the challenges. The U.S. District Court for the Eastern District of Texas granted the states' motion, finding that plain language of the FLSA "defined the [executive, administrative, and professional] exemption[s] with regard to duties, which does not include a minimum salary level." It also found that, even if the FLSA's language were ambiguous, the DOL's regulations were not a permissible construction of the statute because they "created a de facto salary-only test," and "Congress did not intend salary to categorically exclude an employee with [executive, administrative, or professional] duties from the exemption." It concluded that the automatic salary escalator was impermissible for the same reasons.

After finding that the states would likely suffer irreparable harm, weighing the balance of hardships and considering the public interest, the district court entered an injunction enjoining the DOL from "implementing and enforcing the following regulations as amended by 81 Fed. Reg. 32,391, 29 C.F.R. §§ 541.100, 541.200, 541.204, 541.300, 541.400, 541.600, 541.602, 541.604, 541.605 and 541.607 pending further order of this Court." The injunction applies nationwide, and its scope is not limited to the state plaintiffs involved in the litigation.

Although the district court's order does not formally strike down the DOL's new regulations, the ruling indicates that it is "substantially likely" to do so. Any final decision will be subject to appeal. It is unclear what impact, if any, the change in presidential administrations will have on the DOL's position on its new rule.

Contact Information

If you have any questions regarding this alert, please contact the Akin Gump lawyer with whom you usually work or:

Nathan J. Oleson
noleson@akingump.com
202.887.4425
Washington, D.C.

Joel M. Cohn
jcohn@akingump.com
202.887.4065
Washington, D.C.

Robert G. Lian Jr.
blian@akingump.com
202.887.4358
Washington, D.C.

Daniel L. Nash
dnash@akingump.com
202.887.4067
Washington, D.C.

Esther G. Lander
elander@akingump.com
202.887.4535
Washington, D.C.

Lawrence D. Levien
llevien@akingump.com
202.887.4054
Washington, D.C.