

LABOR AND EMPLOYMENT LAW ALERT

Department of Labor Drops Appeal of Overtime Rule

After waiting nearly 9 months, employers likely have an answer as to whether the 2016 final overtime rule (2016 Overtime Rule) issued under President Obama's administration will be enforced. On September 5, 2017, the United States Department of Labor (DOL) filed a motion in the Fifth Circuit Court of Appeals to dismiss its appeal of a preliminary injunction preventing enforcement of the 2016 Overtime Rule. One day later, the Fifth Circuit granted the DOL's unopposed motion, ending the litigation.

The DOL's motion to dismiss its appeal follows an August 31, 2017 ruling from a federal judge in the Eastern District of Texas, finding the 2016 Overtime Rule unlawful. This decision comes from the same federal judge who blocked the 2016 Overtime Rule from taking effect last November. In striking down the 2016 Overtime Rule, the court concluded that the DOL exceeded its authority by effectively making an employee's salary, rather than their job duties, determinative of whether the employee is exempt from overtime. While the DOL could appeal the decision, that is very unlikely to occur. In seeking dismissal of its appeal before the Fifth Circuit, the DOL explained that the appeal of the injunction was moot due to the recent decision invalidating the 2016 Overtime Rule.

Despite these rulings, the DOL is expected to increase the federal minimum salary level for overtime pay exemptions, but at a much lower level than the 2016 Overtime Rule. Earlier this year, Labor Secretary Alexander Acosta told the United States Senate that he would consider raising the salary threshold to \$30,000 to account for inflation. The DOL is still seeking public input before it revises the overtime regulations. Public comments are due by September 25, 2017. Employers who are interested in submitting public comments to the DOL so they can be heard on this important issue are encouraged to contact one of our employment law attorneys for assistance.

For questions regarding this information, please contact any of the Hancock Estabrook, LLP attorneys listed below.

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