



# DOL Overtime Regulations Blocked: What Now?

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Robin S. Burroughs, Esq.

Allison B. Gotfried, Esq.

Douglas B. Mishkin, Esq.

Ronald W. Taylor, Esq.

Brian J. Turoff, Esq.



# What We'll Cover

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- **What Happens Next?**
- **What Do You Do?**
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  - If you've told employees you are making changes, but have not done it yet, what do you do?
  - If you've already begun implementation, but have not yet finished, what do you do?
  - If you've already completed implementation, what do you do?
- **Final Advice**



# History of the Final Rule

- **Bona fide Executive, Administrative, and Professional Employees (“White Collar” Exemptions)**
  - The Final Rule substantially increased - from \$455/week to \$913/week (\$47,476 annually) - the minimum salary that must be paid to employees so that they fall within the FLSA’s “white collar” exemptions.
  - This salary threshold was set to update automatically every three (3) years beginning on January 1, 2020.
  - There was no change to the primary duties test.
- **Highly Compensated Employees**
  - The Final Rule also increased the required salary threshold for an employee to be considered “highly compensated” from \$100,000 to \$134,004.
  - This salary threshold was also set to update automatically every three (3) years beginning on January 1, 2020.
  - There was no change to the duties test.
- The Final Rule was set to go into effect on December 1, 2016.



# Legal Action

- In September 2016, two separate groups filed lawsuits in a Texas federal court seeking to enjoin the implementation of the Final Rule. The two lawsuits were subsequently consolidated by the Court.
- Summary of Plaintiffs' arguments:
  - (i) The DOL usurped states' authority to determine the wages for state employees;
  - (ii) The DOL overtook states' budget-making power;
  - (iii) The DOL circumvented the notice and comment process;
  - (iv) The Final Rule would significantly tax state-run programs; and
  - (v) The Final Rule would result in prohibitively expensive costs to many businesses.



# Federal Court Decision

- On November 22, 2016, the Texas federal court entered a nationwide injunction preliminarily prohibiting the implementation of the Final Rule.
- The Court opined, in part, that the DOL had exceeded its authority by raising the minimum salary threshold for the white collar exemptions in a manner that “supplants” the exemptions’ “duties test.”
- The Court did not opine on the change to the highly compensated exemption’s updated salary threshold.



# What Happens Next?

- It is important to note that this decision does not permanently override the Final Rule; rather, it indefinitely postpones the date of implementation until after the original December 1 date.
- This decision may be challenged by the Department of Labor.
- Employers must still comply with the current overtime regulations.
- Implications of the new presidential administration
- States may amend their own laws.



# What Do You Do?

- **What do you do if:**
  - If you've done nothing, what do you do?
  - If you've told employees you are making changes, but have not done it yet, what do you do?
  - If you've already begun implementation, but have not yet finished, what do you do?
  - If you've already completed implementation, what do you do?



# Final Advice

Employers should take this time to review their current employee classifications and consult with legal counsel about their next steps.

**Note:** There is not one correct legal answer in this scenario. Ultimately, employers must make the decision on how to move forward after careful consideration of their business needs and in consultation with their legal counsel. This judgment will require consideration of both legal and non-legal factors (including state law drivers).





# Questions?

**Douglas B. Mishkin, Esq.**

Partner, Venable LLP

[dbmishkin@Venable.com](mailto:dbmishkin@Venable.com)

202.344.4491

**Ronald W. Taylor, Esq.**

Partner, Venable LLP

[rwtaylor@Venable.com](mailto:rwtaylor@Venable.com)

410.244.7654

**Brian J. Turoff, Esq.**

Partner, Venable LLP

[bturoff@Venable.com](mailto:bturoff@Venable.com)

212.503.0557

**Robin S. Burroughs, Esq.**

Associate, Venable LLP

[rsburroughs@Venable.com](mailto:rsburroughs@Venable.com)

202.344.4868

**Allison B. Gotfried, Esq.**

Associate, Venable LLP

[abgotfried@Venable.com](mailto:abgotfried@Venable.com)

202.344.8526