

## Federal Court Halts FLSA Rule Changes

### Fair Labor Standards Act's Overtime and Minimum Wage Provision Changes on Hold

With only days remaining before its implementation, a federal court judge issued a nationwide preliminary injunction on November 22, 2016, to delay the U.S. Department of Labor's regulation changes in the Fair Labor Standards Act (FLSA). These regulation changes would have increased the minimum salary levels for certain positions exempt from the FLSA's overtime and minimum wage provisions, also referred to as the "white collar exemptions." The most controversial change would have increased the minimum salary level for executive, administrative and professional exempt positions to \$47,476 (\$913 per week) from the current amount of \$23,660 (\$455 per week). For now, businesses subject to the FLSA must maintain a holding pattern and await future court or legislative action on the FLSA regulation changes.

### States Argue Employers Would Incur Substantial Economic Harm

This preliminary injunction is the result of several states filing a lawsuit in a Texas federal court, entitled *State of Nevada et al. v. U.S. Department of Labor*, Civil Action No. 4:16-cv-00731-ALM, challenging certain provisions in the FLSA rules. The states argued that employers would incur substantial economic harm if forced to dramatically increase the minimum salary levels for their exempt positions. A preliminary injunction is a temporary mechanism used by parties in a lawsuit to maintain the status quo pending the outcome of the case. Parties seeking an injunction must establish, in part, that the party seeking relief would suffer irreparable harm without the court's immediate intervention.

### Exemptions for Executive, Administrative, Professional and Computer Positions

As a brief overview, the FLSA requires that employers subject to this law pay their employees minimum wages and overtime for any hours worked over forty hours in a regular work week. Certain FLSA regulations contain exemptions from these minimum wage and overtime requirements for positions classified by the employer as executive, administrative, professional and computer positions. These employees' positions are referred to as "exempt" because they are exempt from the FLSA's overtime and minimum wage requirements. However, to qualify for this exemption, the employer must establish certain criteria:

1. the salary level test;
2. salary basis test; and
3. the duties test. If an employer cannot meet all three criteria, it is ineligible for the exemption.

### Now Is the Time to Prepare for Future Changes

This temporary injunction means that the FLSA rule changes will not take effect on December 1st, but the changes may be implemented in the future depending on the outcome of the case or any future legislative action. The Department of Labor is considering its legal options to challenge this injunction. For now, businesses, governmental entities, and non-profit organizations subject to the FLSA do not need to implement the changes in the salary levels of their exempt employees, but these organizations should consult with an employment attorney to determine the best course of action during this waiting period or if they have already made changes to their exempt employee's positions or salaries.