

Update: Stage Now Set for DOL to Adopt More Modest Salary Level for Overtime Exemptions

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BY TIM K. GARRETT

After the September issue of The Corporate Counselor went to press, Texas Federal Judge Amos Mazzant issued a final ruling striking down the Obama-era overtime rule. An extensive discussion of the rule can be found in the January 2017 edition of this newsletter, when I wrote about Judge Mazzant's previous issuance of a preliminary injunction of the overtime rule, until he could review the case in detail and issue a final ruling. The preliminary injunction halted enforcement of the overtime rule on a nationwide basis. Enforcement of the rule would have more than doubled the minimum salary level that employers would have been required to pay in order for employees to meet the so-called "white-collar" exemptions from overtime pay requirements.

Before President Trump took office, President Obama's Department of Labor (DOL) appealed Judge Mazzant's preliminary injunction to the U.S. Court of Appeals for the Fifth Circuit. President Obama's DOL clearly wanted to save the overtime rule, asked for an expedited appeal, and was challenging Judge Mazzant's preliminary ruling as improper.

After President Trump took office, however, the DOL was in a quandary of sorts — which I [discussed in last month's issue](#). In his final ruling, Judge Mazzant clarified that he was not questioning the DOL's authority to adopt a salary level test as part of the overtime exemptions. Rather, Judge Mazzant explained that the Obama-era DOL had gone too far in adopting a salary level so high as to become the "de-facto" test for meeting the overtime exemptions. The law authorizes the overtime exemptions, explained Judge Mazzant, based upon whether the employee performs duties as an executive, professional or administrative employee. But the new overtime rule, with a salary level so high, essentially made the overtime exemptions based on pay, not duties. Hence, Judge Mazzant ruled that the overtime rule's high salary level exceeded the DOL's authority.

Within a few days of the final ruling, the DOL asked to withdraw its appeal of the preliminary injunction as moot, or no longer necessary, and the Fifth Circuit granted the request the following day.

So, What Does This Mean?

The Obama-era overtime rule is dead.

The DOL is authorized to adopt a salary level test as part of the exemptions, so long as deemed sufficiently reasonable as to not override the duties aspect of the exemptions.

The DOL is poised to review the salary levels currently in place and attempt, perhaps, a more modest salary level — which is estimated to be in the mid \$30,000s.

Any new salary level test, however, must follow the process of new rule-making, which will take a matter of months at the very least.

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