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Even Better Than a Black Friday Sale: Federal Court Blocks DOL Overtime Rule

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The Gift:

Businesses have something truly to be thankful for this year, well, at least for now. On Tuesday, November 22, 2016, the federal district court for the Eastern District of Texas issued a preliminary injunction enjoining the Final Overtime Rule on a nationwide basis. The Final Overtime Rule, which was projected to affect over four million workers, was set to go into effect on December 1, 2016. But, by yesterday's court's ruling, the Department of Labor is now enjoined from implementing and enforcing the Final Overtime Rule.

Product Specifications:

In a 20-page decision, federal court Judge Amos Mazzant opined that the DOL's Final Overtime Rule was unlawful. The court found that Congress defined the EAP (Executive, Administrative and Professional) exemption with regard to duties and did not include a minimum salary level: "Nothing in the EAP exemption indicates that Congress intended the Department to define and delimit with respect to a minimum salary level". Therefore, the federal district court held that the DOL exceeds "its delegated authority and ignores Congress's intent by raising the minimum salary level".

The argument that the DOL may have exceeded its authority was further bolstered by the DOL's own admissions. According to the district court, the DOL admitted that it cannot create an evaluation "based on salary alone". The court, however, concluded that the "salary level creates essentially a *de facto* salary-only test": "For instance, the Department estimates 4.2 million workers currently ineligible for overtime, and who fall below the minimum salary level, will automatically become eligible under the Final Rule without a change to their duties". Therefore, the Court held that "Congress did not intend salary to categorically exclude an employee with EAP duties from the

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exemption”.

Under the Final Rule, the minimum salary level was also set to automatically increase every three years based on the 40th percentile of weekly earnings of full-time salaried workers in the lowest wage region of the country. The district court held that because the Final Rule is unlawful, the DOL “also lacks the authority to implement the automatic updating mechanism.”

Any Return Policy:

It is important to recognize that this is only a temporary injunction. The court held that “[d]ue to the approaching effective date of the Final Rule, the Court’s ability to render a meaningful decision on the merits is in jeopardy. A preliminary injunction preserves the status quo while the Court determines the Department’s authority to make the Final Rule as well as the Final Rule’s validity.” The court further stated that “[i]f the Department lacks the authority to promulgate the Final Rule, then the Final Rule will be rendered invalid and the public will not be harmed by its enforcement. However, if the Final Rule is valid, then an injunction will only delay the regulation’s implementation.”

Appeals, under a variety of theories, are likely. But will this additional time allow the Final Rule to be ‘trumped’? Many commentators opined that the recent election of President-Elect Donald Trump was too late to affect the Final Rule given the December 1st enactment date. However, this preliminary injunction may provide the new administration enough time to act should it choose to do so.

Product Reviews:

Employers, many who are just now truly recovering from the recession, will find this be a welcomed gift this holiday season. However, employees, who may have expected an increase in their compensation as a result of the Final Rules, may believe they just received coal in their stocking.

Complicated Directions and Missing Pieces--What Employers Should Do:

Unlike the 2012 Snuggies trend, there is no one-size-fits-all answer on how employers should respond. It may be that procrastinators and last-minute shoppers actually benefit the most from this decision.

Based upon this ruling, employers have a number of options, including: (1) putting plans on hold, (2) rolling back Final Rule compliance steps already taken, or (3) leaving Final Rule compliance steps already taken in effect. But how an employer responds is mainly dependent on the employer’s prior actions towards compliance with the Final Rule, the extent of its implementation, and the motivating factors for its changes. In deciding the best course of action for your company, it would be advisable to confer with your labor and employment attorney about your company’s unique situation.

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