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Management Alert

Obama Overtime Rule Invalidated by Federal Court in Texas

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Seyfarth Synopsis: *On Thursday afternoon, a federal judge in Texas issued an order officially invalidating the U.S. Department of Labor's 2016 overtime rule, which would have more than doubled the minimum salary level for most overtime-exempt employees. While the long awaited ruling brings a measure of closure for employers, the possibility of appeal, as well as the new administration's efforts to revise the existing overtime exemption rules, will be critical issues for employers watch in the weeks and months to come.*

For nearly a year, employers have been watching and waiting as litigation challenging the Obama administration's revision to the Fair Labor Standards Act's executive, administrative, and professional ("EAP") exemptions—a revision intended to make millions of more Americans eligible for overtime pay—wound its way through litigation in the Eastern District of Texas and the Fifth Circuit of Appeals. As of Thursday afternoon, the waiting is over: District Judge Amos Mazzant issued an order invalidating the revised rule.

The Obama DOL's revised rule, which was finalized in the summer of 2016 and slated to take effect on December 1, 2016, would have increased the salary level required for EAP employees from $455 per week (i.e., $23,660 per year) to $913 per week (i.e., $47,476 per year). The rule also called for automatic, inflation-indexed updates to the salary level every three years. Ultimately, the revised rule did not become effective on December 1, however, because Judge Mazzant issued an order days prior that preliminarily enjoined it from going into effect.

District Judge Mazzant issued his order in two consolidated lawsuits challenging the DOL for acting beyond its rulemaking authority. The order was the result of a motion filed by a group of state attorneys general who argued that the DOL's rulemaking was invalid, in part because it exceeded the authority Congress gave DOL to define who is a "bona fide" EAP employee who should not be entitled to overtime pay. At about the same time that the "state plaintiffs" filed their motion for preliminary injunction, which the district court granted, another set of plaintiffs—a group of business associations ("business plaintiffs")—filed an expedited motion for summary judgment, advancing similar arguments that the DOL's rulemaking was unlawful.

After Judge Mazzant granted the state plaintiffs' preliminary injunction motion, the Obama DOL filed an interlocutory appeal in the Fifth Circuit attacking the injunction order. Importantly, however, this was just before the Trump Administration took office. Ultimately, briefing in the appeal was delayed as a new president settled into office and his new Labor Secretary, Alexander Acosta, took the helm at DOL. In doing so, Secretary Acosta and his Acting Solicitor were required to assess how to maneuver a proceeding involving an injunction order that on the one hand blocked the implementation of an overtime rule championed by the prior administration, but on the other hand suggested that the DOL might not have authority to set any salary level for the EAP exemptions, despite having done so for nearly eighty years.

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In the meantime, the business plaintiffs' motion for summary judgment lingered before the district court.

Thursday's ruling was preceded by a recent flurry of activity. On Wednesday, for example, Judge Mazzant issued an order confirming no further argument was necessary on the summary judgment motion. The court also collapsed the state plaintiffs' and business plaintiffs' cases together and joined the state plaintiffs to the business plaintiffs' pending summary judgment motion. Nevertheless, it seemed unlikely that Judge Mazzant would rule on the summary judgment motion before hearing from the Fifth Circuit regarding his earlier preliminary injunction order. After all, an appellate ruling on whether it was proper to preliminarily enjoin the new rule certainly could have impacted or at least informed Judge Mazzant's reasoning on whether the rule should be declared invalid, as the summary judgment motion argued it should.

Meanwhile, at the Fifth Circuit, oral argument was slated for October 3, and the parties were jockeying for an opportunity to be heard. The business plaintiffs, who were not parties to the appeal, requested permission to appear as amici at the oral argument. Soon thereafter, all parties filed a motion to stay proceedings while they attempted to negotiate a deal that would eliminate the need for further proceedings. Indeed, even on Thursday as the district court was issuing its final judgment, the parties on appeal were filing various submissions with the Fifth Circuit.

So perhaps all were surprised when District Judge Mazzant issued orders finding that the DOL's 2016 rulemaking was invalid, and that the AFL-CIO would not be joined to the case. The district court's ruling on both of these issues is fairly straightforward. On the motion for summary judgment, which collapsed all parties and remaining issues into its walls, the court ruled as follows:

- As associations and similar groups, the business plaintiffs had standing to challenge the DOL's rulemaking.
- The FLSA does in fact apply to state governments, contrary to the state plaintiffs' arguments.
- Applying *Chevron* deference analysis, the DOL exceeded its authority by setting a salary level test that in effect eliminated the need to consider whether employees performed duties that demonstrate their roles working in a bona fide EAP capacity, based on definitions that Congress would have understood at the time it enacted the FLSA.
- The automatic updating provided by the DOL's final 2016 rule was unlawful for similar reasons.
- Clarifying an area of concern for the DOL and other stakeholders, the court did not rule on the question of whether the DOL has authority to set any salary level for the EAP exemptions. The court's ruling concerned only the 2016 rulemaking, finding the heightened salary level under the revised rule goes too far.

In denying the AFL-CIO's motion to intervene as a necessary or permissive party, the court reasoned:

- The union's motion was untimely, as it had been aware of the litigation and the issues on which it bore. Yet it waited to file its motion to intervene until material events had occurred in the litigation.
- The union had failed to show that the DOL and related defendants were not adequately representing the interests that it purported to protect.
- The union had argued among its primary points that Secretary of Labor nominee Andrew Puzder would not protect those interests; but Alexander Acosta was confirmed as Secretary of Labor, meaning that Mr. Puzder's potential actions never became a reality.
- And the court would nevertheless not exercise its discretion to allow the union to join the case.

The question on everyone's mind is: ***where does this leave us?***

One easy answer is that with respect to the EAP exemption itself, the 2004 rule remains in place. Employees making $455 per week (i.e., $23,660 per year) and whose primary duty satisfies one of the EAP duties tests may be classified as exempt.

Beyond that, there are no easy answers. The parties are no doubt considering whether the district court's summary judgment order, which purports to withdraw all prior rulings, renders the pending appeal moot or requires its dismissal. After all, the

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summary judgment motion decided by the district court presents largely the same issues currently before the Fifth Circuit—namely, the validity of the new overtime rule. Some commentators have already exclaimed that the district court's order mooted the interlocutory appeal entirely. Our view is that the question could be more complicated. Suffice it to say, there's a lot to digest.

Either way, it also remains unclear whether either side will appeal Thursday's rulings. While one would assume that DOL will not, we can't slam the door on the possibility. As we saw with the appeal of the preliminary injunction, even the new Administration's policy differences may not override DOL's desire to defend itself against court orders limiting its authority, as the preliminary injunction did and as the court's summary judgment order appears to do. If DOL determines that there is an institutional need to preserve its rulemaking authority, then it is possible we might see a DOL-initiated appeal, which would further complicate the question of how the union might agitate the proceedings.

As for the AFL-CIO, next steps are even foggier at this moment. Given that the DOL has already signaled the commencement of new rulemaking on the EAP exemptions, the AFL-CIO may take the view that even a complete victory on appeal—i.e., one that would permit its inclusion in the case and the reversal of the district court's summary judgment decision—would ring hollow, as it could be undone by the DOL's efforts to formulate a new rule that would take the place of the Obama rule.

Without question, the Eastern District of Texas's order invalidating the 2016 overtime rule brings a large measure of closure for employers waiting to learn whether the rule would ever go into effect. The completeness and finality of that closure will depend largely on whether the AFL-CIO seeks appeal, as well as the DOL's anticipated efforts to implement a new rule altogether. We will, of course, continue to monitor and update you on these important events.

If you would like further information, please contact Brett C. Bartlett at bbartlett@seyfarth.com, Alexander J. Passantino at apassantino@seyfarth.com, or Kevin Young at kyoung@seyfarth.com.

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