

# Anchin Alert

**Anchin, Block & Anchin LLP**  
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## **DOL's Overtime Rule Blocked by U.S. District Court**

Just over a week before the U.S. Department of Labor's (DOL's) new overtime rule was scheduled to go into effect, a federal judge blocked it. The rule was set to make dramatic changes to the determination of which executive, administrative and professional employees are entitled to overtime pay under the Fair Labor Standards Act (FLSA).

The final rule, issued last May, was to have doubled (to \$47,500) the maximum salary an executive, administrative or professional worker could earn and remain eligible for mandatory overtime pay, making it more difficult for employers to classify employees as exempt from overtime requirements.

### **The Overtime Exemption**

To qualify for an exemption from the overtime requirements under current federal law, an employee generally must satisfy three tests:

- 1. Salary basis test.** The employee is salaried, meaning he or she is paid a predetermined and fixed salary that's not subject to reduction because of variations in the quality or quantity of work performed.
- 2. Salary level test.** The employee is paid at least \$455 per week or \$23,660 annually. This is the threshold that the new DOL rule would have doubled.
- 3. Duties test.** The employee primarily performs executive, administrative or professional duties.

Neither job title nor salary alone can justify an exemption — the employee's specific job duties and earnings must also meet applicable requirements.

Certain employees (for example, generally doctors, teachers and lawyers) aren't subject to either the salary basis or salary level tests. The current regulations also provide a relaxed duties test for certain highly compensated employees (HCEs) who are paid total annual compensation of at least \$100,000 and at least \$455 per week.

The new rule would have made no changes to the duties test. The DOL determined that the new standard salary level and automatic updating would work with the duties test to distinguish between overtime-eligible workers and those who may be exempt. Moreover, as a result of the revised salary level, employers wouldn't need to consider the duties test as often — if a worker's pay didn't satisfy the salary level test for exemption, the employer wouldn't need to bother assessing the worker's duties.

The DOL estimated that 4.1 million salaried workers would have become eligible for overtime when they worked more than 40 hours in a week. The new rule would likely have had the greatest impact on retail and service industries and nonprofit groups.

The changes would have had a tax impact as well: Employers' payroll tax liability would have increased as they paid overtime to more employees who worked in excess of 40 hours a week or paid higher salaries to maintain overtime exemptions.

### **The Ruling**

In September, a coalition of business groups and 21 states filed lawsuits claiming that the new overtime rule's salary threshold increase was arbitrary.

On November 22, U.S. District Judge Amos Mazzant ruled that the federal law governing overtime doesn't allow the DOL to decide which workers are eligible for overtime pay based on salary levels alone.

The FLSA states that employees who perform executive, administrative or professional duties can be exempt from overtime. Judge Mazzant wrote in his ruling that the new rule "creates essentially a de facto salary-only test." He granted a nationwide injunction stopping the implementation of the rule.

### **What's Next?**

The DOL is reviewing its options, saying it's confident that the new rule is legal. However, even if it chooses to appeal the decision, the appeal may be dropped after President-elect Donald Trump takes office in January 2017.

For more information on the ruling or how your company should be applying the overtime exemption, please contact your Anchin relationship partner at 212.840.3456.



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