

## INSIGHTS

## Federal Court Invalidates Obama Administration Overtime Exemption Rule

September 1, 2017

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On August 31, 2017, Judge Mazzant of the Eastern District of Texas invalidated the long-enjoined Obama Administration revised overtime regulation. The same judge previously granted a temporary, nationwide injunction blocking the revised regulation in November 2016 (our previous client alert is available [here](#)). As a result, the revised regulation never took effect, although because of the late issuance of the injunction many employers had already modified their pay practices.

### Order Invalidates the Revised Regulation

Following his reasoning in granting the temporary injunction, Judge Mazzant noted that Congress delegated authority to the DOL to issue regulations to define which employees are employed in an executive, administrative or professional capacity—a task that must be based, under the plain meaning of the Fair Labor Standards Act, on the employee’s duties. Ultimately, the DOL (i) “does not have the authority to use a salary-level test that will effectively eliminate the duties test” or (ii) “categorically exclude those who perform [exempt] duties based on salary level alone” from exempt status. Because “Congress was clear that the determination [of exempt status] should involve at least a consideration of an employee’s duties,” and the revised regulation’s dramatically heightened salary level prevented this consideration, the DOL did not have the authority to issue the revised regulation.

### DOL Issues a Request for Information

Likely in anticipation of the judge’s unfavorable decision, and presumably recognizing that doubling the salary threshold was untenable, the DOL issued a request for information in July inviting comment on the test for exempt status. The request sets out 11 questions on a wide variety of aspects of the exemption test, ranging from whether to have a salary test, whether to have multiple salary levels, if the salary level should automatically increase, and whether bonus or incentive payments should be considered. The request indicates that the DOL is open to considering different options for the exempt status test. The request remains open for public response through September 25 and is available [here](#).

### Parties Seek Continuance of Oral Argument at Fifth Circuit

Oral argument is scheduled for October 3 in the Fifth Circuit for the appeal of Judge Mazzant’s temporary injunction. Notably, on August 31, 2017, the DOL and plaintiffs challenging the regulation filed a Joint Motion to Continue Oral Argument requesting postponement of the hearing. The motion explains that the parties are “engaged in ongoing discussions on how to narrow the scope of their dispute,” and seeks additional time to continue the negotiations. The

Fifth Circuit has not ruled on the August 31 continuance motion or ordered additional briefing.

Before the Fifth Circuit, the DOL has asserted that it has the authority to utilize a salary-level test as part of the exempt status test. Although the DOL has conceded that it does not want the Court to consider the specific salary level in the revised regulations, the DOL remains steadfast in its position that a minimum salary threshold is an essential requirement of the white-collar exemptions. It remains to be seen to what extent this issue is the basis of the ongoing negotiation between the parties.

**What is Next?**

Based on the DOL request for information and actions on appeal, the DOL will likely propose a more modest increase to the 2004 regulatory salary threshold of \$450.00/week. Given the breadth of the Department's questions and the possible outcomes at the Fifth Circuit, there are additional potential revisions that may be proposed by the DOL for the next version of the regulations. Bracewell will continue to monitor developments and provide updates as appropriate.