

# Employment Practices Liability

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## Federal Court Stops December 1st Implementation of New Overtime Rules

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**Executive Summary:** Employers do not have to make changes to comply with the Department of Labor's (DOL's) new overtime regulations by the December 1, 2016 deadline. In a surprising decision, a federal District Court in Texas issued an injunction halting the implementation of the new overtime rules nationwide. If the injunction remains intact when President-elect Trump takes office, it may allow the new administration additional avenues in which to seek to modify, amend or repeal the DOL's overtime rule, even if further judicial action is not taken to ultimately overturn the regulations.

**The Decision:** Back in September 2016, two separate lawsuits were filed in the U.S. District Court for the Eastern District of Texas: one on behalf of 21 states, led by Nevada and Texas, and another by the U.S. Chamber of Commerce and more than 50 other business organizations. Both lawsuits contended that the DOL exceeded its delegated authority in establishing the new overtime regulations and sought emergency preliminary injunctive relief to delay the December 1, 2016, effective date. The DOL's new regulations, which were published in May 2016, increased the minimum salary level needed to qualify under the white collar exemptions to \$913 per week (doubling the current threshold), and also sought automatic updating of this minimum salary level every three years.

In mid-October, the two lawsuits were consolidated into one action. Several motions are pending before the Court, but oral argument was heard on the States' motion for an emergency preliminary injunction last week, and Judge Mazzant indicated from the bench that a decision would be rendered by November 22, 2016. While there was some optimism that the automatic updating portion of the new regulations would be struck down, most did not believe that Judge Mazzant, appointed by President Obama, would enjoin the rule entirely. However, in today's decision, Judge Mazzant did just that.

In its ruling, the Court held that the States demonstrated a likelihood of success on the merits, noting that "Congress did not intend salary to categorically exclude an employee with [white collar] duties from the exemption." Specifically, Judge Mazzant stated that the "significant increase to the salary level creates essentially a de facto salary-only test." The Court further held that the States had demonstrated irreparable harm if the rule goes into effect on December 1st, and therefore granted the injunction.

**Impact on Employers:** The immediate impact is that employers **do not** have to comply with the new overtime regulations on December 1, 2016. If the final rule had been implemented, then the Trump administration would have needed to issue a new rule to modify or overturn the Obama regulation, which could take years. The Court's injunction may allow Trump to modify or repeal the rule without going through formal rule-making. Employers should be aware that this is only a preliminary injunction, and not a permanent injunction. This preliminary injunction only delays the effective date of the new regulations until the Court makes a final determination on the merits.

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