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EMPLOYER ALERT NOVEMBER 2016

WHAT SHOULD EMPLOYERS DO NOW THAT THE PROPOSED SALARY AND OVERTIME RULES HAVE BEEN BLOCKED?

On November 22, 2016, a federal judge in Texas entered a nationwide preliminary injunction prohibiting the U.S. Department of Labor (“DOL”) from implementing updates to the salary requirements for exempt employees.¹ A few months ago, twenty-one (21) states joined together to file suit and argued that the DOL’s proposed regulations exceeded the DOL’s authority under the Fair Labor Standards Act. The Court agreed with the states and issued the injunction. The injunction remains in place pending further order of the Court or appeal. Making the long-term fate of the proposed regulations even more uncertain is that the appeal of the ruling may depend on the views and policies of the new Trump administration.

So, what should an employer do in the meantime? Should it move forward with plans to implement the regulations? Or, adopt a “wait-and-see” approach?

Below is a chart of a few key factors that businesses should consider when making that decision:

Reasons to move forward with plans to comply with the regulations	Reasons <u>not</u> to move forward with plans to comply with the regulations
<ul style="list-style-type: none">• Minimal financial impact	<ul style="list-style-type: none">• Substantial financial impact
<ul style="list-style-type: none">• Substantial adverse effect on employee morale	<ul style="list-style-type: none">• Limited adverse effect on employee morale
<ul style="list-style-type: none">• Substantial administrative efforts, financial planning and employee/manager training that would be hard to delay or put on hold	<ul style="list-style-type: none">• Limited administrative efforts, financial planning, and employee/manager training that could be delayed or put on hold

If an employer decides not to implement plans to comply with the regulations, we recommend that the employer keep records of the hours worked by employees who would have been affected by the regulations. This practice will hedge against the risk of a decision on appeal that upholds the regulations and makes enforcement and compliance with them retroactive.

Of course, please let us know if we can help you understand the compliance requirements of the law or evaluate how your business should react to these developments.

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¹ The proposed regulations required employers to pay employees who are exempt from payment of overtime a salary of at least \$47,476 annually (\$913 per week). The regulations were promulgated in May 2016 and were scheduled to go into effect on December 1, 2016.