



November 2016

Court Stays DOL Overtime Rule, Holds Increased Salary Test Impermissibly ‘Supplants’ Duties Tests

The proposed overtime rules will not go into effect on Dec. 1. In *State of Nevada, et al v. United States Department of Labor, et al*, a closely-watched case brought by 21 states (and joined by numerous business organizations) challenging the Department of Labor’s (DOL) rule amendment which would have roughly doubled the minimum salary threshold for many employees to be considered exempt from federal overtime requirements (set to take effect Dec. 1, 2016), a Texas federal court, on the evening of Nov. 22, issued a nationwide order enjoining the DOL “from implementing and enforcing” its new rule. Importantly, for employers who have spent considerable time and resources auditing their workforces in anticipation of the new rule, and on the basis of that have determined to reclassify previously exempt employees because their duties are not sufficient to have the individual qualify as exempt, the injunction does not impact any potential reclassification decisions that were based on the duties employees perform. Rather, the injunction impacts only those employees who are performing exempt duties, but would have fallen below the new salary threshold. Nonetheless, while many questions remain, for now at least employers can “stand down” from steps they were preparing to take to come into compliance with the amended rule.

Since 2004, DOL regulations have required that employees earn a minimum salary of \$23,660 annually and meet certain “duties tests” to qualify for most so-called “white collar” exemptions from federal overtime requirements. Earlier this year, however, the DOL promulgated a new rule that would have raised that minimum for most exemptions to \$47,476, effective Dec. 1, 2016. Twenty-one states, joined by more than 50 business organizations, filed suit in Texas federal court challenging the DOL’s amended rule and seeking an emergency preliminary injunction. The Court granted their request last night.

The Court rejected the states' argument that the DOL's rule was unconstitutional under the Tenth Amendment. The Court agreed with the states, however, that the DOL's rule exceeded its authority under the federal Fair Labor Standards Act. While the Court studiously stopped short of "making a general statement on the lawfulness of the salary-level test" for white collar exemptions overall, it observed that "Congress intended the [white collar] exemption to depend on an employee's duties rather than an employee's salary." Therefore, because the DOL's "significant increase to the salary level creates essentially a de facto salary-only test" that "supplants the duties test," the Court concluded the new rule may well be unlawful. Critically, the court reasoned that the rule "is applicable to all states" and "[c]onsequently, the scope of the alleged irreparable injury extends nationwide," and held that a nationwide injunction staying the DOL's rule was required.

For now at least, the Dec. 1 implementation date is no longer effective, and employers now have additional "breathing room" to consider their options:

- > Remember, the new regulations were never designed to affect the "duties" tests, only the "salary" test. Many employers conducted audits in the months leading to the anticipated Dec. 1 roll-out, and to the extent those audits identified employees who may have already been reclassified because of their duties, those decisions should likely not be impacted. Similarly, under the injunction nothing stops employers who were simply awaiting the Dec. 1 roll-out to finalize such duties-based reclassifications from forging ahead.
- > The Court's injunction is likely not the final word. The current administration could undertake emergency appellate steps; and the incoming administration has not yet been heard from officially on the topic.
- > Note, however, that it is unlikely that the DOL's rule will go into effect as currently written. Under the Court's injunction, unless modified or overturned, the old rule, with its \$23,660 salary minimum and duties test, continues to be the law. Employees paid a salary less than \$47,476 but who meet those prior tests will still be exempt. To the extent employers were planning salary increases solely to be in compliance with the proposed rule's \$47,476 floor, under the injunction that step is for the time being not legally compelled. Human resources and communications will likely want to address the situation where employers have already informed such employees they would receive raises – or have even implemented the raises.

This *GT Alert* was prepared by **Robert H. Bernstein**, **John R. Richards**, and **Michael J. Slocum**. Questions about this information can be directed to:

- > [Robert H. Bernstein](mailto:bernsteinrob@gtlaw.com) | +1 973.360.7946 | bernsteinrob@gtlaw.com
- > [John R. Richards](mailto:richardsjr@gtlaw.com) | +1 678.553.2157 | richardsjr@gtlaw.com
- > [Michael J. Slocum](mailto:slocumm@gtlaw.com) | +1 973.360.7900 | slocumm@gtlaw.com
- > Or your [Greenberg Traurig](#) Attorney

Albany +1 518.689.1400	Delaware +1 302.661.7000	New York +1 212.801.9200	Silicon Valley +1 650.328.8500
Amsterdam + 31 20 301 7300	Denver +1 303.572.6500	Northern Virginia +1 703.749.1300	Tallahassee +1 850.222.6891
Atlanta +1 678.553.2100	Fort Lauderdale +1 954.765.0500	Orange County +1 949.732.6500	Tampa +1 813.318.5700
Austin +1 512.320.7200	Houston +1 713.374.3500	Orlando +1 407.420.1000	Tel Aviv[^] +972 (0) 3.636.6000
Berlin⁻ +49 (0) 30 700 171 100	Las Vegas +1 702.792.3773	Philadelphia +1 215.988.7800	Tokyo[⌘] +81 (0)3 4510 2200
Berlin-GT Restructuring⁻ +49 (0) 30 700 171 100	London[*] +44 (0)203 349 8700	Phoenix +1 602.445.8000	Warsaw[~] +48 22 690 6100
Boca Raton +1 561.955.7600	Los Angeles +1 310.586.7700	Sacramento +1 916.442.1111	Washington, D.C. +1 202.331.3100
Boston +1 617.310.6000	Mexico City⁺ +52 55 5029.0000	San Francisco +1 415.655.1300	Westchester County +1 914.286.2900
Chicago +1 312.456.8400	Miami +1 305.579.0500	Seoul[∞] +82 (0) 2.369.1000	West Palm Beach +1 561.650.7900
Dallas +1 214.665.3600	New Jersey +1 973.360.7900	Shanghai +86 (0) 21.6391.6633	

This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ⁻Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ⁻ Berlin - GT Restructuring is operated by Köhler-Ma Geiser Partnerschaft Rechtsanwälte, Insolvenzverwalter. ^{}Operates as Greenberg Traurig, LLP. ^{**}Greenberg Traurig is not responsible for any legal or other services rendered by attorneys employed by the strategic alliance firms. ⁺Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [∞]Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. [^]Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. [⌘]Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [~]Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2016 Greenberg Traurig, LLP. All rights reserved.*