

Overtime Rule Delayed: What Does It Mean for You?

A nationwide injunction has delayed the new Department of Labor FLSA final rule. What to do now? Take these steps.

By Christine Lambrou Johnson & Scott J. Ward

On November 23, a federal trial court judge in Texas issued a nationwide preliminary injunction delaying implementation of the Department of Labor's new rule regarding minimum wage and overtime requirements under the Fair Labor Standards Act (FLSA). The case is *State of Nevada v. United States Department of Labor*, before Judge Amos Mazzant of the Eastern District of Texas.

The new rule was about to go into effect on December 1. But the judge's order blocks its implementation and "preserves the status quo" while the court considers a number of legal challenges to the new rule. This means that you don't have to change any employee's status from exempt/salaried to non-exempt/hourly just because the employee doesn't meet the \$47,476 salary test – for now.

As explained in "Staffing Strategies in Light of the New Overtime Rules" (Vol. 34, No. 3, NonprofitWorld.org), the new rule was set to more than double the salary threshold for exempt employees from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476 per year). Since the announcement of this rule, organizations have been scrambling to reclassify employees and adjust salaries to be ready to comply.

The substantial increase to the salary test threatens to impose particular hardships on nonprofit organizations. Millions of organizations may be affected: The Department itself estimates that the rule will increase the number of hourly employees by 4.2 million nationwide. The Texas district court's order, however, freezes the rule from taking effect.

The Department states that it hasn't made a final decision whether it will pursue an expedited appeal of the judge's opinion, but asserts it is "confident in the legality of all aspects of" the new rule. In the meantime, the nationwide injunction will remain in effect unless the Department asks the appellate court to stop it and the appellate court grants the Department's request.

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So what should you do, at least for now? Three things:

- 1. Get your attorney's advice** based on your specific facts in light of this important development.
- 2. Subject to your counsel's advice, it is likely prudent** to maintain your own status quo while the legal battle rages on. If your organization has found the new rule challenging, and if your new employee classifications and new salaries haven't yet gone into effect, you may be best served by continuing to follow the old FLSA rules rather than trying to implement changes. But if your organization has already made changes to comply with the new rule, this preliminary injunction doesn't bar your voluntary compliance if that would be less disruptive and in the best interests of your organization and its employees.
- 3. Continue to monitor** the ongoing legal challenges and any further developments from the Department of Labor or the courts. Perhaps even the new Presidential Administration will enter the fray. Stay tuned. 

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