

Wage & Hour Alert FAQ

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Ogden Murphy Wallace's Employment and Labor Law Practice Group has received a lot of questions about the overtime laws that were scheduled to go into effect on December 1, 2016. This email is to address some of those questions.

What happened?

Yesterday, a federal judge in the Eastern District of Texas issued a nationwide preliminary injunction against the Department of Labor's ("the DOL") new rule increasing the salary-level test for exempt employees from \$23,660 per year to \$47,476 per year. The injunction blocks the new rule from going into effect on December 1, 2016.

Can employers in Washington rely on the Texas court ruling?

On its face, the ruling says it is nationwide. However, the federal courts in Washington may decide not to follow the Texas court's ruling because Washington was not a party to the decision. It is unlikely that the courts here in Washington will rule on this issue prior to the December 1, 2016 effective date of the new rule, which leaves Washington employers in a state of uncertainty unless the DOL issues a statement indicating whether or not it intends to enforce the rule in states that were not a party to the Texas lawsuit.

What are the possible consequences if a Washington employer does not raise exempt employee's salaries on December 1?

If the Washington courts decide that the Texas decision does not apply to them, then any Washington employers who failed to raise the salary of their exempt employees to \$47,476 per year on December 1, 2016 would be liable for wrongful withholding of wages and would owe back wages to the affected employees, plus interest at 12% and any attorney's fees they may have incurred to collect the money. The employees or the DOL could also make a claim for double damages, but employers may be able to avoid double damages by arguing that they, in good-faith, relied upon the Texas injunction.

What are the possible consequences if a Washington employer does raise exempt employee's salaries on December 1?

The Texas injunction does not prohibit employers from raising salaries on December 1. The only consequence is that if the new salary rule is thrown out, the employer will have paid the employee more than the law required.

What do you recommend?

At this point, we recommend waiting until we are closer to December 1 to finalize any decisions about employee raises to meet the salary test to see if the DOL will issue any guidance as to whether it intends to enforce the rule in states that were not a party to the Texas lawsuit. If no guidance is issued by the DOL, we suggest weighing the cost of the salary increases and effect on morale of not giving an employee an increase against the risk that employers will be ordered to pay more than back wages to employees if the DOL rule is found to be applicable to Washington employers.

What if I have employees in others states?

Contact us to see if the states where your employees are located were named as parties in the Texas lawsuit.

What if I have other questions?

Please call or email a member our Employment and Labor Law Practice Group at 206-447-7000 or 509-662-1954 with any questions you may have regarding the new developments in implementation of the DOL overtime rules.