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# Another Twist on Overtime Rule Saga: DOL Appeals from an Apparent Win

The saga of a 2016 Obama administration federal rule, issued under the Fair Labor Standards Act (FLSA), has taken a somewhat surprising turn. The 2016 rule, which was scheduled to be effective December 1, 2016, would have greatly increased the weekly salary threshold for white collar overtime pay exemptions. The federal Department of Labor (DOL) recently filed an appeal in a Texas federal court lawsuit, challenging an August decision by the district court judge that effectively invalidated the Obama administration rule.

We have previously posted several times about the 2016 overtime rule and the various twists and turns occurring after the Obama administration sought to implement the rule, most recently discussing an earlier appeal this summer by the Trump administration DOL.

At first blush, the August ruling by the federal district court striking down the Obama administrations salary overtime threshold rule would appear to represent a win for the Trump administration given that the administration has virtually abandoned the Obama-era rule. In that light, the new DOL appeal seems surprising. But in striking down the Obama rule, the district court judge broadly ruled that the DOL did not have the legal authority to set a salary basis for overtime exemptions under the FLSA and instead requires Congressional approval to do so. Through its appeal, the DOL will effectively be fighting for preservation of broader powers on its part, which would allow it to draft and implement a different overtime rule, with a lower salary threshold increase for overtime exemptions (in addition to preserving broader rule-making authority in other areas).

It is widely believed that the Trump DOL will eventually issue a rule that does indeed increase the exemption salary level, but that the new minimum threshold would be significantly lower than the \$47,476 annual (\$913 per week) level contained in the 2016 rule. In fact, the DOL intends to move forward, while its appeal is pending, with the rule-making process and draft a new minimum salary threshold rule. The DOL will ask the appellate court to stay the appeal while that rule-making process is being undertaken.

Clarity is not likely to come on this significant pay issue for several more months. Until then, the old minimum salary threshold (\$23,660 annual/\$455 per week) remains in place.