



Court Enters Nationwide Order Enjoining DOL's Final Rule On White Collar Exemptions

In our last issue, we wrote about the U.S. Department of Labor's (DOL's) long-awaited final rule regarding the white collar exemptions to the overtime rules contained in the Fair Labor Standards Act (FLSA). The DOL issued the final rule on May 18, 2016, drastically increasing the minimum salary level necessary for executive, administrative, and professional employees to satisfy the exemption. It was set to become effective on December 1, 2016, and under its formula, the minimum salary necessary to meet the exemption would have more than doubled, from \$455 to \$913 per week. The salary level was to be adjusted every three years.

Employers scrambled to ensure that their practices were in compliance by December 1. However, on November 22, just days before the final rule was to take effect, a U.S. District Court in Texas entered a nationwide injunction halting implementation of most provisions of the new rule. The injunction was issued in a lawsuit filed by 21 states, including Michigan, which had been consolidated with a similar lawsuit filed by the Plano Chamber of Commerce and over 50 other business organizations. The plaintiffs filed a motion for a preliminary injunction, arguing the final rule was invalid as inconsistent with Congress' intent.

In ruling on the motion, the court analyzed the exemptions contained in the FLSA and concluded that Congress intended the terms executive, administrative, and professional to refer to employees performing actual executive, administrative, and

280 North Old Woodward
Suite 400
Birmingham, Michigan 48009
248-645-0000
WWW.KOHP.COM



professional duties. The court noted that Congress did not include a minimum salary level in the FLSA, and reasoned that, by raising the minimum salary level to such a degree that it effectively supplanted the duties test, the DOL exceeded its authority and ignored Congress' intent. The court agreed that the plaintiffs had met all the necessary requirements for issuance of a preliminary injunction, and it determined that the nationwide injunction sought by the plaintiffs would be proper. The court recently denied the DOL's request for a stay.

With the court's ruling, employers nationwide were no longer required to take action to comply with the final rule by December 1. Many employers had been planning to put salary increases into place, and some had already announced such increases. Others were planning to switch some employee classifications to non-exempt. These changes are no longer necessary – at least not at this time.

The DOL quickly appealed the adverse ruling to the U.S. Court of Appeals for the Fifth Circuit. On December 8, 2016, the Fifth Circuit granted the DOL's motion for an expedited appeal, with briefing to be completed on January 31, 2017, and oral argument to be held as soon as possible thereafter. January 31 is, of course, shortly after the inauguration, and a new Secretary of Labor should be in place. President-Elect Trump has announced his selection of Andrew Puzder, a CEO in the fast food industry, for that role.

According to Kendall Fells, a not impartial organizing director for the SEIU-funded *Fight for \$15*, "Puzder as labor secretary is like putting Bernie Madoff in charge of the

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Treasury.” Puzder's company has been faulted for objectifying women. Advertisements for Carl’s Jr. have for years featured scantily clad female models eating burgers. In a 2015 interview with *Entrepreneur*, Puzder shrugged off accusations of sexism, pointing to a rise in sales. “I like beautiful women eating burgers in bikinis,” he said. "I think it's very American. . . . I used to hear [that] brands take on the personality of the CEO. And I rarely thought that was true, but I think this one, in this case, it kind of did take on my personality." Asked in November 2016 on Fox Business whether he would want to work in Trump's cabinet, Puzder said. "I think it would be . . . the most fun you could have with your clothes on."

Both President-Elect Trump and Puzder have expressed their disagreement with the DOL’s final rule, and it is possible that the DOL under Mr. Puzder will not proceed with the appeal, will then repeal the final rule, and will begin a new round of rule-making. If the DOL does proceed with the appeal and succeeds, it is possible that the DOL will delay implementation or create a carve-out for small businesses, which is what President-Elect Trump has suggested he would like to see.

Sonja L. Lengnick

264181

280 North Old Woodward
Suite 400
Birmingham, Michigan 48009
248-645-0000
WWW.KOHP.COM