

November 23, 2016

Court Blocks Department of Labor Overtime Rules; Local Requirements Still Have Effect

Yesterday, a Texas federal judge issued a nationwide injunction preventing implementation of U.S. Department of Labor (“DOL”) regulations that were scheduled to increase the minimum salary level required for employees to qualify for the executive, administrative, and professional overtime exemptions under the Fair Labor Standards Act (“FLSA”). The DOL regulations were scheduled to increase the salary requirements for these exemptions from \$455 per week (\$23,660 annually) to \$913 per week (\$47,476 annually), effective December 1, 2016. As a result of the court’s ruling, the DOL’s regulations increasing the minimum salary will not take effect next week, and their future enforcement may depend on further litigation, an appeal of the decision, or changes in policy under the new president. It is unclear whether the DOL or courts would retroactively apply the increased minimum salary requirements to December 1, 2016 if the Texas court’s injunction is overturned on appeal.

Although the federal overtime regulations will not take effect as originally expected, employers should review state law to determine whether any changes in local wage and hour requirements may apply. For example, New York employers will should prepare for pending increases to the minimum weekly salary required for employees to qualify for the executive and administrative exemptions from overtime pay requirements under state law, currently \$675 per week (\$35,100 annually). The New York Department of Labor (“NYSDOL”) recently proposed regulations that will, beginning December 31, 2016, gradually increase the weekly minimums associated with these exemptions under state law linked to corresponding increases to the minimum wage.

*747 Third Avenue
New York, N. Y. 10017
Tel: 212-758-7600
www.cfk-law.com*

Before yesterday's injunction, the proposed state salary minimums were not scheduled to surpass the increasing federal salary levels until the end of 2017. The NYSDOL's proposal also adjusts other provisions of the state's minimum wage orders, including uniform maintenance pay, tip credits, and allowances for meals, lodging, and utilities, in line with scheduled increases to the state minimum wage that were signed into law on April 4, 2016. The proposed regulations would be effective December 31, 2016 and the Department of Labor is accepting comments on its proposal through December 3, 2016.

Similar to the state law minimum wage increases, the NYSDOL's proposed salary thresholds for the executive and administrative exemptions will increase at different rates based on the region in which the employee works. (The NYSDOL's current regulations set the weekly salary threshold for these exemptions at 75 times the minimum wage, and the proposed regulations continue this practice.) Absent changes to the NYSDOL's proposal, effective December 31, 2016, the regional minimum salary levels for exempt administrative and executive employees under state law will be:

- \$825.00 per week (\$42,900 annually) for employees working in New York City for employers with eleven or more employees;
- \$787.50 per week (\$40,950 annually) for employees working in New York City employers with ten or fewer employees;
- \$750.00 per week (\$39,000 annually) for employees working in Nassau, Suffolk and Westchester counties; and
- \$727.50 per week (\$37,830 annually) for employees working outside of New York City, Nassau, Suffolk, and Westchester counties.

The proposed regulations provide that an employee must be paid the applicable minimum salary "when working in" a given region to qualify for the administrative or executive exemptions under state law, and do not expressly address how the NYSDOL will apply the salary level test to employees who work in multiple regions during a given week. We expect that the NYSDOL will clarify the application of this rule, and the Firm will be monitoring the agency's publications for additional guidance in this regard.

The proposed minimum salary levels for each region would increase annually on December 31, eventually reaching a weekly minimum salary threshold of \$1,125.00 (\$58,500 annually) when the regional minimum wage increases to \$15 per hour: for exempt administrative and executive employees in New York City who work for larger employers, effective December 31, 2018; for New York City employees of smaller employers, by the end of 2019, and; for employees in Nassau, Suffolk, and Westchester counties, by the end of 2021. Employees outside of these regions will be subject to a minimum salary level of \$937.50 per week (\$48,750 annually) beginning December 31, 2020, and further increases will likely be tied to the regional minimum wage, which will increase to \$15 at a rate to be determined by the Budget Division Director in consultation with the NYSDOL.

If you have any questions, please contact Nick Bauer at (212) 758-7793 or any other attorney at the Firm. For additional information regarding increases to the New York minimum wage, please also see our client advisory dated [April 16, 2016](#).

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