

DOL Will Not Defend Obama Era FLSA Salary Threshold Rule, but Uncertainty Continues

By Meghan N. Cox

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Employers who have been anxiously awaiting an answer as to whether the Department of Labor ("DOL") will continue to defend the Obama Administration's controversial overtime rule that was temporarily blocked by a federal court finally have their answer - or, at least a partial answer. In a recent filing with the Fifth Circuit, the DOL clarified that it will no longer defend the Obama era rule that would have more than doubled the salary requirement for employees to meet the FLSA's overtime exemptions. Nevertheless, employers should not be too quick to celebrate.

In its filing, the DOL still requested the Fifth Circuit overturn the lower court's holding that the DOL does not have authority to establish a salary level test. In other words, while the DOL does not wish to enforce the \$47,476 salary level threshold the Obama Administration sought to implement, the DOL wants to retain the authority to increase the salary level threshold to an amount it sees fit.

While Secretary of Labor Alexander Acosta has expressed that he believes the \$47,476 salary level threshold set by the Obama Administration's rule is too high, he does support a more gradual raise in the salary level threshold to a level between \$30,000 and \$35,000 per year. The DOL also recently submitted a Request for Information ("RFI") to the Office of Information and Regulatory Affairs, which would allow the DOL to obtain public input on potential overtime rule changes.

Thus, all indications are that the DOL will attempt to revise the current salary threshold for overtime exemptions. However, any changes to the salary threshold by the DOL still have to await a ruling from the Fifth Circuit as to whether the DOL has the authority to establish a salary level test. Whichever way the Fifth Circuit rules, an appeal to the Supreme Court is possible, meaning the salary threshold issue could remain in a state of limbo for months to come.

To discuss this further, please contact:

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