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Update on FLSA Salary Hike

On Friday, November 8, 2024, a Texas federal judge heard arguments in the case of *Texas v. U.S. Department of Labor*, challenging the DOL's regulation raising the salary threshold for the white-collar exemptions to the overtime requirements of Fair Labor Standards Act.

The DOL's final rule, published in April 2024, raised the salary threshold from $35,568 to $43,888 ($844 per week) on July 1, 2024. It raises the minimum again to $58,656 ($1,128 per week) effective January 1, 2025. In the arguments Friday, the Court heard from the State of Texas and a number of associations and private employers groups in a consolidated case as to why this rule should be enjoined nationally (i.e., the DOL would be prohibited from enforcing the rule anywhere), and from the DOL as to why it should not.

Based on his previous rulings in this and related cases (the judge previously enjoined application of the regulation to the State of Texas, but did not invalidate the rule overall), most court watchers expect the Texas judge to strike down the rule, and to do so before the second hike takes effect in January. Even so, there are still major unknowns. Some members of the Supreme Court have expressed skepticism over a lone judge striking down federal regulations nationwide (as opposed to just for the parties before the court). And any ruling would be subject to immediate appeal, albeit to the generally conservative Fifth Circuit Court of Appeals in New Orleans.

Some also expect the incoming Trump administration to rescind the boost to the salary threshold. Even if that happens, inauguration will not occur before the hike is scheduled to take effect, so politics alone cannot solve the issue in the absence of court action. Also, should the rule remain standing, to reverse the new rule, the new administration would have to publish a new rule, take public comments and undergo administrative review – a process that takes many months at best.

There is at least one other case taking aim at the regulation which could possibly be decided before January 1. *Flint Avenue, LLC v. U.S. Department of Labor* is also pending in Texas and the parties are currently in a 14-day window to supplement their briefing on why the rule should or should not be enjoined, and whether that decision should be limited to the parties in that case or applied nationally.

We recommend that employers prepare for the increase – identifying the positions impacted and evaluating whether to raise salaries to the threshold or convert employees to an hourly pay basis. But hold off on implementing any changes until we see what the courts will do.

If you have any questions or would like additional information, please contact Al Vreeland at 205-323-9266 or avreeland@lehrmiddlebrooks.com.