Gammon & Grange PC

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Nonprofit/Business

Alerting Leaders to Key Legal Developments November 28, 2016

Nationwide Injunction Delays Implementation of New Department of Labor FLSA Final Rule

On Tuesday Nov. 23, a federal trial court judge in Texas issued a nationwide preliminary injunction delaying implementation of the Department of Labor's New Rule regarding minimum wage and overtime requirements under the Fair Labor Standards Act (FLSA). The case is *State of Nevada v. United States Department of Labor*, before Judge Amos Mazzant of the Eastern District of Texas.

The New Rule was about to go into effect on December 1. But the judge's order blocks its implementation and "preserves the status quo" while the court considers a number of legal challenges to the New Rule. This means that employers across the country do not have to change an employee's status from exempt/salaried to non-exempt/hourly just because the employee does not meet the $47,476 salary test--*for now*.

As we have explained in two prior Alerts on the subject, [*Alert 1*] and [*Alert 2*] the Department's New Rule was set to more than double the salary threshold for exempt employees from $455 per week ($23,660 per year) to $913 per week ($47,476 per year). Since the announcement of the New Rule six months ago, employers have been scrambling to reclassify employees and adjust salaries to be ready to comply. The substantial increase to the salary test threatens to impose particular hardships on churches, ministries, and other nonprofit organizations, diverting precious resources away from mission and charitable services. Millions of employees may be affected--the Department itself estimates that the Rule will increase the number of hourly employees by 4.2 million nationwide. The Texas district court's order, however, freezes the Rule from taking effect.

The Department stated that it has not made a final decision whether it will pursue an expedited appeal of the judge's opinion, but asserts it is "confident in the legality of all aspects of" the New Rule. Given the imminent original December 1 implementation date, it seems likely the Department will make a decision very soon.

In the meantime, the nationwide injunction will remain in effect unless and until the Department asks the appellate court to stop or reverse the nationwide injunction, and the appellate court grants the Department's request.

So what should an employer do, at least for now? Three things.

First and most important, get your attorney's advice based upon your specific facts and circumstances in light of this important development.

Second, subject to your counsel's specific advice, it is likely prudent for most employers to maintain your own *status quo* while the legal battle rages on. If your organization has found the New Rule challenging, and if your new employee classifications and new salaries have not yet gone into effect, you may be best served by continuing to follow the old FLSA rules, rather than trying to implement changes under the New Rule. But if your organization has already implemented changes to comply with the New Rule, this preliminary injunction does not bar your voluntary compliance if that would be less disruptive and overall in the best interests of your organization and its employees.

Third, continue to monitor the ongoing legal challenges and any further developments from the Department of Labor or the courts. Perhaps even the new Presidential Administration will enter the fray--stay tuned.

Christine Lambrou Johnson, *Of Counsel* at Gammon & Grange, P.C., is an experienced litigator representing employers in their obligations under federal and state employment law. She prosecuted dozens of FLSA wage and hour law claims while serving as Assistant Attorney General for the State of Illinois, and successfully defended numerous discrimination suits.

Gammon & Grange, P.C. conducts Employment and FLSA Audits to ensure compliance with the patchwork of state and federal regulations and ultimately to help nonprofits and for-profits alike flourish as their employees thrive. Ms. Johnson would be happy to provide a no-cost initial consultation to determine whether your organization could benefit from the audit.