

DOL Slows & Side-Tracks the New Rule on Exempt Employees

Remember that case on the Minimum Wage and Overtime Act that's been sitting before the court of appeals? After the Texas district court stopped the Department of Labor from implementing the New Rule, the prior administration quickly appealed. The current administration has taken a different track. Under the Trump administration, the DOL slowed the appeal by asking for more time to file its reply brief until May. And just over a week ago, the DOL again asked the court for more time to file its brief.

As explained in our previous [Alerts](#), the Texas district court froze implementation of the New Rule under the Fair Labor Standards Act by entering a nation-wide injunction. That New Rule would have more than doubled the salary threshold for exempt employees from \$23,660 to \$47,476 per year. The Department of Labor (DOL), under the Obama administration, immediately appealed the court's ruling to the Fifth Circuit and sought expedited briefing to overturn the district court's injunction.

Meanwhile, President Trump was elected and the filing deadlines were extended to accommodate the change in administration. On April 14, the Labor Department again asked the court for more time, noting that Trump's nominee for Labor Secretary (Alexander Acosta) has yet to be confirmed by the Senate. The Department asked to delay its briefs until June 30. Court watchers surmise that the request for more time from the Department of Labor may signal that the Trump administration intends to drop the appeal entirely.

But that would not necessarily end the litigation. The Texas district court held that the Department did not have the authority to set any salary threshold for white-collar exemptions at all. This ruling potentially overturns over 80 years of Labor Department policy and enforcement actions. If the DOL drops its appeal, there are others who have asked permission to intervene in the case so that they can try and overturn the district court's ruling. The DOL could draft a new overtime rule that lowers the threshold amount. But the Texas court's ruling means that it may not have the authority to do even that.

Like many agency transitions between old and new administrations, the Labor Department's New Rule has had a bumpy ride. Now it's jumped to a different track and is waiting at the station with no estimated time of departure. This hiatus has given states the space to jump in with their own proposed overtime and exempt employee legislation. Given Secretary-designate Acosta's moderate position on the New Rule at his Senate [confirmation hearing](#), this DOL train may be out of service indefinitely, while more liberal states lay their own wage and hour tracks. Watch the *G&G Law Alerts*TM monitor for updates on DOL actions and the New Rule.

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