

Employment CLIENT ALERT

FIFTH CIRCUIT EXPEDITES DOL'S APPEAL CONCERNING OVERTIME RULE

In June, we wrote about the United States Department of Labor's new overtime rule which was scheduled to take effect on December 1, 2016. The overtime rule would have increased the salary threshold for overtime pay to \$47,476, nearly double the current level. Employees earning less than that amount would have been owed overtime, or time-and-a-half, for working more than 40 hours per week. As a result of a recent decision by a federal judge, the rule did not take effect on December 1.

On November 22, 2016, Texas District Court Judge Amos L. Mazzant III preliminarily found that the new rule exceeded the DOL's authority and issued an injunction barring its implementation on a nationwide-basis. The injunction halts enforcement of the rule and it will likely remain in effect unless the government can win an appeal.

On December 1, 2016, the Department of Justice, on behalf of the DOL, filed a notice to appeal the preliminary injunction with the U.S. Circuit Court of Appeals for the Fifth Circuit. The Department moved to expedite the appeal,

which was approved by the Court. According to the Court's briefing schedule, the DOL's opening brief will be due on December 16, 2016; the states' brief is due on January 17, 2017; and DOL's reply brief will be due on January 31, 2017. Amicus briefs in support of DOL's are due December 23, 2016 and January 24, 2017 for briefs in support of the states' position. The Court indicated that oral argument would be slated for the first available sitting after the close of briefing. It is unlikely that we will see a resolution prior to Inauguration Day on January 20th. As a result, the DOL, under the Trump administration, would have the option to abandon the appeal if it chose to do so.

Stay tuned for further developments on this issue.

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