

**LEGAL ALERT**

**Preliminary Injunction Blocking New Overtime Regulations Issued**

In May of 2016, the Department of Labor (“DOL”) issued a final rule on overtime regulations under the Fair Labor Standards Act (“FLSA”). The final rule was to go into effect on December 1, 2016. The rule effectively doubled the salary threshold employees must make to be eligible for an exemption from the overtime requirements from \$23,660 to \$47,476.

Two lawsuits were filed against the DOL challenging the overtime regulations. The cases, brought by 21 states and several business organizations, were consolidated, and a preliminary injunction was sought to prevent the regulations from going into effect on December 1. On November 22, 2016, a Texas federal judge issued a nationwide preliminary injunction, finding the Department of Labor did not have the authority to raise the threshold amount.

From a practical standpoint, this may be too little too late for employers who have already conveyed salary increases/changes to their employees. Indiana employers can prospectively change what rate employees are paid, but depending on the circumstances, could be faced with potential breach of contract issues and employee morale problems. For employers who have not yet made changes, there may be a slight reprieve from meeting the deadline of December 1. Only a preliminary injunction has been granted, not a permanent one, and there is likely to be further litigation over the issue. The same judge who entered the preliminary injunction will determine whether a permanent injunction should be entered vacating the new regulations, but this process could take another month or more and would be subject to additional court challenges.

The law is currently unclear on whether regulations which were vacated and then reinstated can be enforced retroactively to the original proposed effective date, or be enforced on a prospective basis only. The Supreme Court is currently deciding a case to determine this very issue (on a different DOL regulation), but a decision will not be issued for several months. Depending upon the Supreme Court’s decision, enforcement of reinstated vacated regulations could be retroactive to the proposed effective date of December 1, 2016.

If Employers decide not to implement the regulations based on the preliminary injunction, there is some legal risk. If the regulations are later upheld, they will be enforced retroactively, subjecting Employers to overtime payments and potentially attorney’s fees. For those employers who elect to not implement the new regulations, we recommend that impacted employees are still required to track their time, as this information will become necessary if in fact the regulations are reinstated and deemed effective as of December 1, 2016.

Please contact Kathryn Cimera ([kcimera@lawmg.com](mailto:kcimera@lawmg.com)) in our firm’s Indianapolis office with questions on the new regulation and for any other employment law matters.