

TRANSPORTATION

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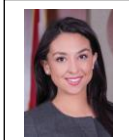
As many of you may have heard, the United States Department of Labor overtime regulations did not go into effect on December 1, 2016 as planned. This article provides an overview of the regulations and their anticipated fate with the incoming administration.

New Overtime Rules Mean Change is Coming for all Employers – Transportation Industry Included – or Do They?

ABOUT THE AUTHORS



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Mary Anne Mellow has over 30 years of experience representing clients regionally in high-stakes personal injury litigation. Mrs. Mellow enjoys a broad spectrum trial practice including product liability litigation, premises liability, professional liability and medical malpractice defense. Mrs. Mellow is a member of the International Association of Defense Counsel, Defense Research Institute, the Trucking Industry Defense Association, and the Network of Trial Law Firms. She can be reached at mmellow@sandbergphoenix.com.



Narcisa Symank is a shareholder in the Business Litigation and Business Law Groups. Focusing exclusively on employment law, she defends discrimination and related lawsuits. As a counselor, Narcisa provides practical, business-minded advice on issues ranging from every-day human resources matters involving ADA accommodations and FMLA leave, to public accommodation concerns, and investigations of sexual harassment complaints and workplace violence threats. Narcisa also assists businesses and individuals with employment, severance and non-compete agreements. She can be reached at nsymank@sandbergphoenix.com.

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This IADC Committee was formed to combine practices of aviation, rail, maritime with trucking together to serve all members who are involved in the defense of transportation including aviation companies (including air carriers and aviation manufacturers), maritime companies (including offshore energy exploration and production), railroad litigation (including accidents and employee claims) and motor carriers and trucking insurance companies for personal injury claims, property damage claims and cargo claims. Learn more about the Committee at www.iadclaw.org. To contribute a newsletter article, contact:



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In May 2016, the United States Department of Labor published the long-awaited revision to regulations that are supposed to change the threshold for when an employer must pay an employee for overtime.¹ The effective date of the new regulations was December 1, 2016, and they were anticipated to cause dramatic changes for employers.² Within the first year of implementation, the update would automatically entitle over 4 million workers to overtime protections, unless employers updated the positions to comply with the changes.³ The impending change required employers to undertake workforce analysis and planning, including budget forecasting, to determine the best and most cost-efficient way to adapt to the changes to come.

The Final Rule focuses primarily on updating the salary and compensation levels needed for Executive, Administrative and Professional workers to be exempt from overtime pay.

Specifically, the Final Rule:

1. Sets the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region, currently the South, which is \$913 per week; \$47,476 annually for a full-year worker;
2. Sets the total annual compensation requirement for highly compensated employees

(HCE) subject to a minimal duties test to the annual equivalent of the 90th percentile of full-time salaried workers nationally, which is \$134,004 annually; and

3. Establishes a mechanism for automatically updating the salary and compensation levels every three years to maintain the levels at the above percentiles and to ensure that they continue to provide useful and effective tests for exemption.⁴

This means that if the employees currently classified as exempt from overtime and minimum wage make less than the new salary threshold for the applicable exemption, they will become entitled to minimum wage and overtime.

Under the old rules, a salary may be as low as \$455 per week, or \$23,660 annually to satisfy the salary threshold part of the relevant exemptions. On December 1, that amount was supposed to increase to a minimum of \$913 per week, or \$47,476 per year. If an employee does not make at least that much, then the employer must pay 1.5 times the hourly rate when the employee works over 40 hours in a workweek.

However, on November 22, 2016, barely a week before the rules were to go into effect on December 1, 2016, in *State of Nevada, et*

¹ *Final Rule: Overtime*, U.S. DEPT. OF LABOR, <https://www.dol.gov/WHD/overtime/final2016/> (last visited Oct. 19, 2016).

² *Id.*

³ *Id.*

⁴ *Fact Sheet: Final Rule to Update the Regulations Defining and Delimiting the Exemption for Executive, Administrative, and Professional Employees*, U.S. DEPT. OF LABOR, 1-2 (May 2016), <https://www.dol.gov/whd/overtime/final2016/overtime-factsheet.pdf>.

al. v. Department of Labor et al., Case Number 4:16-CV-00731, a federal district court in Texas, the United States District Court for the Eastern District of Texas, Sherman Division, entered a nationwide injunction, enjoining the Department of Labor from enforcing the regulations. As a result, while processing the surprise of the injunction so close to when the rules were to go into effect, employers were left wondering whether they should or should not proceed with the planned changes, or continue with the already established changes to their workforces that were the result of mandatory compliance with the new regulations.

As December 1 came and went, speculation as to whether the new overtime regulation will now **EVER** go into effect has only increased. While the Department of Labor has appealed the injunction, there is a question as to whether the appeal will proceed at all following the change in administration when President-Elect Donald Trump takes office on January 20, 2017. Trump's selection of Andy Puzder, the President of CKE Restaurants, Inc., which includes Carl's Jr. fast food chain,

further brings into question whether the regulations will survive. There is also question as to what President-Elect Trump meant on the campaign trail when purportedly indicating that he would like to see small business exceptions to the regulations, given such an exception already exists within the Fair Labor Standards Act.

Lastly, two previously introduced bills may signal legislative efforts to come that may circumvent or curtail the overtime rules, even provided the Department of Labor's Appeal is successful: the Regulatory Relief for Small Businesses, Schools, and Nonprofits, as well as the Overtime Reform & Review Act. The first sought to delay the enforcement of the regulations by six months. The latter, among other changes, sought to phase in increases in the salary threshold over time, eliminate the automatic updates, and possibly create new exemptions.

At this time, the only way to really know the fate of the much awaited salary threshold rules, is to wait. Stay tuned.

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