



NONPROFIT KNOWLEDGE MATTERS



Federal Judge Hits Pause Button on Overtime Rule

Late yesterday, a federal district judge in Texas issued a preliminary injunction blocking nationwide the implementation and enforcement of the Overtime Final Rule that was slated to take effect December 1, 2016. The judge ruled that the U.S. Department of Labor exceeded its authority when it issued regulations in May (the “[Overtime Final Rule](#)”) that changed the criteria for determining which employees are “exempt” from overtime (commonly called the “white collar exemption”) by revising the salary threshold that triggers the exemption.

What does this mean?

Two things. **First**, by itself the injunction pauses the implementation and any enforcement of the new overtime rule, meaning that it will not go into effect as scheduled on December 1. The judge will hold a hearing soon to consider whether to change the preliminary injunction into a permanent injunction.

The Department of Labor is expected to appeal the federal district court’s decision immediately. Depending on the outcome of the appeal, the new overtime rules could still become controlling federal law, simply with a later effective date. But, again, it depends on the outcome of the appeal.

Second, the injunction to stop the Overtime Final Rule does not affect the applicability of existing requirements under the federal Fair Labor Standards Act or state or local employment laws. Current rules that have been in effect for more than a decade, including the duties tests for determining which employees are and are not eligible for the white collar exemptions, remain in effect. Nonprofit and other employers still must pay their employees at least the applicable minimum wage and classify employees correctly as exempt or non-exempt based on the duties they perform.

Remind me...What is this all about?

For employers and employees, the practical question is: “Which employees qualify for an exemption from the overtime requirement under the federal Fair Labor Standards Act (FLSA)?” (States also have wage and hour laws, and some states [automatically follow](#) federal law. Employers are required to follow the law, whether state or federal, that is most generous to the employee.) The FLSA exempts from the overtime requirement “any employee employed in a bona fide executive, administrative, or professional capacity,” often called the “EAP” or “white collar” exemption. Current regulations require that employees must perform the duties of “bona fide” executives, administrative workers, or

professionals and be paid more than a minimum salary. The new overtime rule published by the Labor Department in May 2016, that was planned to go into effect on December 1, would have raised the existing “salary level test” for exempt white collar employees from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476 per year).

This fall, 21 Governors and Attorneys General [filed suit in federal court](#) challenging the overtime rule on several grounds, as did multiple business groups. Federal Judge Amos Mazzant, siding with those challenging the new overtime rule, held that the white collar exemption is based on the duties that individual employees perform, and that the Labor Department did not have the authority to create a different or higher standard for overtime eligibility. Specifically, he wrote: “*Congress gave the Department the authority to define what type of duties qualify [for the overtime exemption] — it did not give the Department the authority to supplant the duties test and establish a salary test that causes bona fide EAP’s to suddenly lose their exemption ‘irrespective of their job duties and responsibilities.’*”

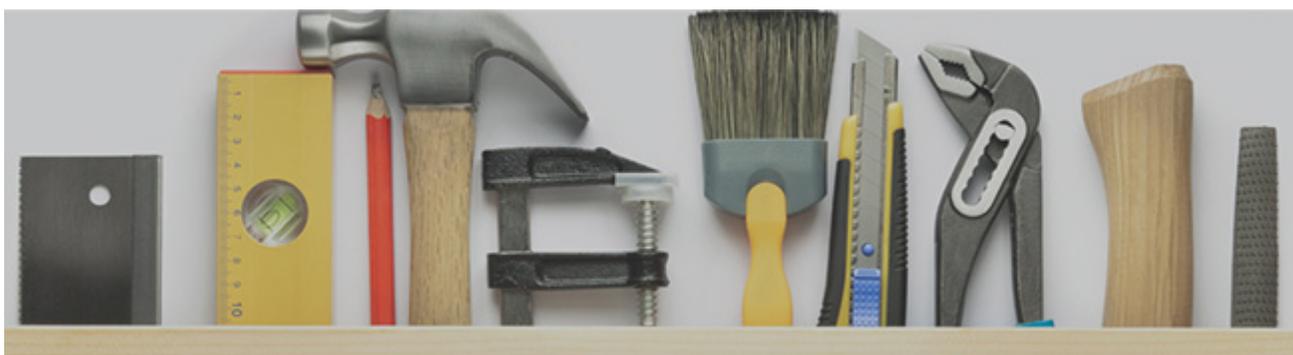
What happens now?

The district judge in Texas issued a nationwide *preliminary* injunction. The court decision does not affect a nonprofit’s obligation to comply with current law. The National Council of Nonprofits urges all charitable nonprofits to ensure that they are following federal and state employment laws. One way is to [conduct an analysis](#) to determine whether employees are properly classified under the laws, taking particular note of the [duties](#) required of executive, administrative, or professional employees - without reference to salary levels, and make changes now.

We can’t say it any better than The Foraker Group, our member state association of nonprofits in Alaska: “Some of you have been preparing for these changes for some time and may believe your efforts have been wasted. Others may have been scrambling to meet the deadline and will welcome this news with a sigh of relief. While we do not know the fate of the FLSA changes and their effective date, we do know that compliance [with current law] remains crucial. Take this time to review your job descriptions, ensure your positions are classified correctly, assess how your compensation structure stands up in the marketplace, and correct your course if needed. Changes or not, deadlines or not, compliance is always the best idea.”

Since the Department of Labor is appealing the decision, the preliminary injunction could be lifted, and the overtime rule put in place **in a matter of weeks or months**. On the other hand, it is possible that the final outcome will be that no changes are made to existing rules in the near term. Given the number of states that recently passed laws in the general election that raise minimum wages in their states, and the growing concerns about wage inequality across the country, we do not expect the issue of compensation for overtime to go hide under a rock!

Going forward, nonprofits can keep up-to-date by staying connected to the National Council of Nonprofits via social media ([@NatlCouncilNPs](#)) and by joining [your state association of nonprofits](#) so that your nonprofit will know the latest developments and have access to information so it can comply with both federal **and state** wage and hour rules.



Resources

- [Classifying employees correctly](#) (National Council of Nonprofits)

- [Key details about the new overtime rule and how it will affect nonprofits](#) (National Council of Nonprofits)
 - [Breaking down your nonprofit's obligation to pay overtime under the new federal Final Rule](#) (National Council of Nonprofits)
 - [State specific final overtime rule resources](#) (National Council of Nonprofits)
 - [State labor laws](#) (DOL)
 - [FLSA Overtime Calculator Advisor](#) (DOL)
 - [The nonprofit overtime implementation conundrum](#) (National Council of Nonprofits)
 - [Compliance Infographic](#) (SHRM)
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