



THE PAYROLL COMPANY

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Late yesterday, in a surprise ruling, Judge Amos Mazzant of the U.S. District Court in Texas issued a temporary injunction blocking enforcement of the new overtime regulations. As you can imagine, the Internet exploded and you may have seen or heard about this ruling. We want to provide you with what we know.

In issuing his decision, Judge Mazzant has delayed implementation of the new regulations (in which exempt pay for certain positions must amount to at least \$913 per week or \$47,476 per year). Judge Mazzant indicated two main reasons the regulations are unlawful. First, the salary threshold level was never intended by Congress to eliminate individuals from overtime exemption who clearly otherwise meet the duties test. By setting such a high salary bar, the new regulations would make otherwise exempt positions become non-exempt simply due to the new threshold. The ruling indicated that this was not the intent when Congress passed the Fair Labor Standards Act and subsequent amendments. Second, the automatic escalator to the threshold does not meet the legal review process required to revise thresholds.

#### **What does this mean?**

1. The new threshold will not take effect on 12/1.
2. There will likely be an appeal by the Department of Labor. As a result, the new threshold may take effect sometime in the future. However, the appeal process goes through the Fifth Circuit Court of Appeals which has a long history of not reversing preliminary injunctions.
3. This is headed to the U.S. Supreme Court which, until a new Justice is appointed, would more than likely decide in a deadlock and, as a result, leave the U.S. District Court's injunction in effect.
4. The ruling may avoid the U.S. Supreme Court if the new Congress passes and the new President signs the Congressional Review Act, eliminating any further litigation.

#### **What should you do if you had changes planned for 12/1?**

1. If you have already raised someone's salary to meet the threshold for an overtime exemption, there is probably little you can do on this. Taking pay away is likely not feasible.
2. If you have already moved individuals from exempt to salaried non-exempt or hourly status, you can reverse this and go back to paying the person as exempt as long as the duties and salary meet the 2004 requirements (i.e., as long as they qualified before you changed them, you can go back to making them exempt). From an administrative standpoint, this is some thing to consider. Having someone who qualifies as an exempt employee remain so is cleaner and simpler. You can explain that the law was at least delayed and until it is mandated, you're going back to the way it was. Here is some suggested text modified by us from one of the legal advisors we follow:  
A federal court in Texas has issued an order that makes it uncertain how the Fair Labor Standards Act's overtime pay exemptions apply to employees who would be impacted by the new rules that were to go into effect on December 1st. Because of the court's order, those rules will not go into effect as expected. To comply with legal requirements regarding how employees are paid, the company has revised its plans. The change to your pay communicated on xx/xx/xx will no longer apply. We will be changing your pay status back to exempt (not eligible for overtime pay) at \$x,xxx.xx per pay period, as it was prior to xx/xx/xx. If legal requirements change in the future, we will revisit this issue, but for now we appreciate your understanding and patience as we all were surprised by this ruling 10 days from the December 1st deadline.
3. If you have plans to raise pay or move individuals to hourly or to salaried non-exempt but have not yet implemented these plans, you can put them on hold until litigation or actions by the new Congress or Administration take their course. Depending on what has been communicated to employees, you can use language similar to above.

Please proceed cautiously in making pay moves that will be perceived as a "take-away." One-on-one discussions with those individuals probably make the most sense. Here is a link to a well-written and well thought-out legal advisory piece: <http://www.seyfarth.com/uploads/siteFiles/publications/MA112216LE.pdf>. There will be many more published from various sources in the coming days. If you are currently a TPCHR client, please contact your HR representative with questions. If you are interested in utilizing our TPCHR services for guidance on these matters, feel free to reply to this email.

We hope you have a Happy Thanksgiving holiday. As a reminder, our office is closed on Thursday and Friday.