

## **New Overtime Exemption Rules Delayed** *(Reprint from 44 North)*

On November 22, 2016, a federal judge granted an injunction that will prevent the Department of Labor (DOL) overtime rule from going into effect on December 1. The ruling is the result of consolidated lawsuits filed by 21 states and numerous business associations arguing that the DOL did not properly carry out its responsibilities under the Fair Labor Standards Act (FLSA).

A preliminary injunction is not permanent. It merely preserves the existing overtime rule, last updated in 2004 when the white-collar duties test was revised. The lawsuit, which will continue to move forward, is not fully settled. The DOL has said in a statement that it is considering all legal options.

There are also opportunities for Congress to amend the existing regulations (which are now stayed, pending the outcome of the lawsuit), as well as for the incoming Trump Administration to make changes to regulations relating to overtime. In particular, House Resolution 6094, which would move the effective date from December 1, 2016, to June 1, 2017, has passed the House and was placed on the Senate's Legislative Calendar on November 15, 2016.

### **New Exemption Rule**

The DOL revisions to the white-collar overtime exemption rules in the FLSA were set to become effective on December 1, 2016. Non-exempt, or "overtime eligible," workers in the United States are entitled to time-and-a-half pay for their hours worked after 40 hours in a week. The "white collar" or "EAP" exemption covers executive, administrative, professional, outside sales, and computer employees. The white-collar exemption salary level was last set at \$455 a week or \$23,660 a year. That salary level is now below the federal poverty level for a family of four. The new DOL standard was set to move the minimum salary threshold to \$913 a week or \$47,476 annually.

The long-standing rules regarding the standard duties test were not changed. However, because many employers misinterpret the duties test, any employer that believes it has an employee or employees who qualify as exempt should consider going back through the test with an attorney.

### **Employer Next Steps**

As the new rules were set to go into effect in one week, many employers have already implemented changes. What should be considered as a next step?

If employees have already been reclassified as non-exempt, or have been provided salary increases to meet the new threshold, employers should consider the risk in reversing

actions already taken. In particular, since the standard for exemption is a combination of both duties and salary, employers may incur liability if they call an employee exempt based on salary alone.

If changes have been planned but not implemented, employers may want to wait to see how the litigation plays out or if legislative changes are implemented.

If employees have been engaged in a dialog with employers regarding potential change in status, the employer should develop and deliver communication that maintains an active dialog with their workforce regarding the status.

In all cases, employers should not assume that overtime changes will be permanently barred. Pay legislation has been on the front burner at the state and municipal level, and will continue to be closely scrutinized.