

## Federal Judge Blocks OT Rule Revisions: What Now?

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The new federal overtime rule is officially on hold after a Texas judge granted a nationwide preliminary injunction late Tuesday, blocking the rule from taking effect on Dec. 1 and allowing employers to stick with the status quo until the courts can rule otherwise.

The U.S. District Court in the Eastern District of Texas granted the injunction, preventing the Department of Labor from implementing revised regulations to the overtime provisions of the Fair Labor Standards Act (FLSA). The injunction temporarily delays the new federal overtime rule, which would have raised the FLSA's salary threshold for exemption from overtime pay from \$23,660 to \$47,476. Multiple states filed suit to block the new rule, and with the injunction in effect, businesses and employees are in a holding pattern. A preliminary injunction preserves the status quo until the court determines the merits of the lawsuit. The court will ultimately determine whether the department has the authority to issue the revised regulations and whether these regulations are a valid exercise of the department's authority.

Until the court reaches a decision on the merits of the case, employers are NOT required to implement the new changes to the overtime rules as planned on Dec. 1. Employers may continue to follow the existing overtime regulations. The department can appeal the preliminary injunction and its proponents have indicated that they are mulling their options. Employers who have already implemented changes to the salaries and/or job descriptions for employees, may leave those decisions in place if they wish to do so, but they are not legally required to do so as of now. Employers who have not yet implemented the proposed changes may wish to postpone those plans until a final decision has been issued by the court.

At this point, it is unclear how this will play out. Congress could step in and provide a legislative fix/alternative, such as requiring an increase over a period of years, rather than all at once. Alternatively, a carve-out may be enacted for smaller business exempting them from compliance.

If Congress does not act, the judge could lift the injunction after a full trial on this case. Potentially, President-elect Donald Trump could stop implementation by ordering the department to withdraw its defense in the case. While he may order the department to drop its defense, it seems unlikely that he will drop the subject entirely since during his campaign he expressed support for revisions to the overtime system.

The bottom line is that nothing will happen with this in the imminent future and it will likely be tabled until at least the spring. For the short term, it seems the judge will stay any further action on the case until the full Congress is back in session and the new administration starts to set its agenda.

Because this occurred so late in the process, it does little to assist companies who have spent thousands of dollars preparing for its implementation. At this point, it is more of a business decision as to whether employers should move

forward to enact the changes. However, if these changes have already been communicated to employees, it may cause a serious morale issue if a company now forgoes implementation.

Employers who decide not to implement the changes should make clear to employees that a judge has frozen implementation of the rules and the company is awaiting further direction from the courts or Congress before moving forward with any changes.

If you have any questions on what your business should do going forward with respect to this latest court decision, please contact [Barley Snyder's Employment Law](#) group.