



BOUSQUET HOLSTEIN PLLC

Alert

Employment & Labor Practice Group

Mandatory Increases to FLSA Minimum Salary Requirements Blocked by Federal Court

Syracuse, New York

December 2016

Last week a United States District Court in the Eastern District of Texas in the case of the *State of Nevada, et al., v. United States Department of Labor* issued a Preliminary Injunction that temporarily enjoins the United States Department of Labor ("DOL") from implementing certain, long planned, changes to the Fair Labor Standards Act ("FLSA"). As a result, the mandatory increases to the minimum salary that must be paid exempt workers under the FLSA, which had been slated to take effect on December 1, 2016, are temporarily suspended until the injunction has been lifted or the case is decided.

The Court's decision is significant to employers here in New York, and elsewhere in the nation, because the Court issued a **nationwide** injunction which, at least on its face, prevents the implementation of the Final Rule across the nation. While the Court determined that it had the authority to issue a nationwide injunction and there is recent precedent wherein two United States Appellate Courts upheld the issuance of nationwide injunctions, it is not clear how courts across the nation will address an injunction issued by a court in another jurisdiction.

The action was brought by the State of Nevada and twenty other States ("State Plaintiffs") to challenge the DOL's changes to the "white collar" exemptions. Those changes would have affected millions of employees who work in executive, administrative and professional capacities. After bringing suit, the State Plaintiffs made an emergency motion seeking a Preliminary Injunction to prevent the DOL from implementing what is now commonly known as the "Final Rule" - at least on a temporary basis. More specifically, the State Plaintiffs challenge the planned increases to the minimum salary level for employees to qualify for the white collar exemptions from \$455.00 per week (\$23,660.00 annually) to \$921.00 per week (\$47,892.00). The Final Rule was to become effective on December 1, 2016.

Continued on next page...



Mandatory Increases to FLSA Minimum Salary Requirements Blocked by Federal Court

Employers in New York should also keep in mind that the New York State Department of Labor has proposed a gradual increase to the minimum salary level for exempt employees. If these proposed regulations are adopted, the first salary increase will occur on December 31, 2016. Employers outside of New York City, Nassau, Suffolk, and Westchester Counties will be required to pay a minimum salary of \$727.50 per week to executive and administrative employees. Employers in New York City who employ 11 or more employees will be required to pay a minimum salary of \$825.00 per week to executive and administrative employees. Employers in New York City who employ 10 or fewer employees will be required to pay a minimum salary of \$787.50 per week to executive and administrative employees. Employers in Nassau, Suffolk, and Westchester Counties will be required to pay a minimum salary of \$750.00 per week to executive and administrative employees. These amounts will increase each year. There is still no minimum salary under New York law to qualify for the professional exemption even under the new proposed regulations.

Please also keep in mind that the minimum wage for non-exempt employees increases to \$9.70 per hour on December 31, 2016. For Upstate "fast food establishments" as defined by New York State law, the minimum wage increases to \$9.75 on December 31, 2016. Also on December 31, 2016, tipped employees in Upstate New York must receive at least \$7.50 per hour, and the employer may take a tip credit of \$2.20 which, if actually earned by the employee, will bring the tipped employee's wages up to \$9.70 per hour.

Employers must therefore consider how these developments will impact their plans for addressing employee compensation. If you would like assistance in understanding these developments and your options for given the present state of the law, please feel free to contact one of our Employment and Labor Practice Group attorneys.

Bousquet Holstein Employment and Labor Practice

How may we be of service?



The Employment & Labor Practice Group at **Bousquet Holstein PLLC** provides representation to employers, large and small, and to employees. Our attorneys make it a priority to become familiar with our clients' businesses. We emphasize addressing employment, discrimination, and labor issues before they become problems and we advise our clients in all areas of human relations and human resource practices to satisfy our clients' business objectives. If we can

provide you with additional insight and information regarding changes to the law and how they may impact your business, please contact **L. Micha Ordway at 315.701.6441 or Lordway@BHLAWPLLC.com or John L. Valentino at 315.701.6308 or JValentino@bhlawpllc.com**

