

# Department of Labor Appeals Texas Order Enjoining Enforcement of New Overtime Rules

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We have written more than a few times here about the new Fair Labor Standards Act (“FLSA”) overtime rules that were scheduled to go into effect on December 1, 2016, dramatically increasing the salary threshold for white collar exemptions.

Most recently, we wrote about the [November 22, 2016 nationwide injunction entered by a federal judge in Texas](#), enjoining the Department of Labor (“DOL”) from enforcing those new rules on the grounds that the DOL had overstepped its bounds.

The injunction threw the new rules into a state of limbo, as employers and employees alike were left to wonder whether the DOL would appeal that decision to the Fifth Circuit Court of Appeals.

Under normal circumstances, one would assume that the DOL would appeal that ruling. However, normal circumstances do not exist. With a new President set to be

sworn in shortly, and with a new Secretary of Labor presumably to be appointed thereafter, there was much speculation about what the DOL would do.

The question has now been answered – at least for the short term.

On December 1, 2016 – perhaps not coincidentally, the same day the rules were to go into effect – [the Department of Justice \(“DOJ”\) filed an appeal on behalf of the DOL.](#)

The DOL has issued a brief statement about its position, which may be found [here](#).

In short, it is the DOL’s position that the salary basis test has been part of the FLSA overtime rules since 1940, and that the new rules were the result of a comprehensive rule-making process that complied with the law.

While the notice of appeal has been filed, it remains difficult to predict whether or how long the appeal will in fact proceed. Unless the President-elect should indicate otherwise, it is certainly possible that the new Secretary of Labor will pull the plug on the appeal shortly after he or she assumes the role.

We will continue to monitor the case and share any significant developments. In the meantime, it would appear safe to say that employers should feel comfortable that they need not comply with the new rules, and that those who already implemented or announced changes prior to the injunction should seek guidance on how best to proceed if they intend to rescind those changes.

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