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BULLETIN

Spoiler Alert: Court Plunges Dagger in Heart of Obama-Era Overtime Regulations, Setting Stage for Possible Season Two Resurrection

BY ANDREW L. RODMAN, ESQ.



If you're an employment lawyer, then surely you've been following for approximately 18 months the ups and downs of the

crazy rollercoaster ride initially aimed at updating the salary threshold for overtime exemptions under the Fair Labor Standards Act, 29 U.S.C. § 201, *et. seq.* ("FLSA").

Season One of this overtime soap opera kicked off with President Barack Obama directing the Secretary of Labor to "modernize and streamline" the "white collar" FLSA overtime exemptions, 29 C.F.R. Part 541. Presidential Memorandum – Updating and Modernizing Overtime Regulations (March 13, 2014). In May 2016, that process began; the Department of Labor (DOL) published revised regulations that increased the exempt salary threshold from \$455 per week (\$23,600 annually) to \$913 per week (\$47,476 annually), and even included a mechanism for automatic, future salary threshold adjustments. 81 Fed. Reg. 32,391 (May 23, 2016). The DOL set the "go live" date as December 1, 2016.

Chaos ensued. HR professionals

spent the next several months tackling compliance issues, and the financial side of the corporate house spent the next several months asking, "How are we going to pay for this?"

"Most doubted (correctly) that the Trump administration would stand behind the Obama administration's regulations."

Mid-season in the soap opera, with the presidential election around the corner, several states and business groups sued the DOL and sought an emergency injunction in a Texas federal court. Suspense.

And then it happened. On November 22, 2016, a few weeks after President Donald Trump's victory, merely eight days before the regulatory "go live" date, and after some employers already had increased salaries to the \$913 per week threshold, the Texas court entered a nationwide, temporary injunction. *State of Nevada, et. al. v. United States Department of Labor, et. al.*, Case No. 4:16-cv-00731 (E.D. Tex. Nov. 22, 2016). Drama at its best.

Of course, we all saw the next development coming from miles

away—an appeal by the DOL to the Fifth Circuit. *State of Nevada, et. al. v. United States Department of Labor, et. al.*, Case No. 16-41606 (5th Cir.). Then, over the next several

months, we witnessed a whole host of legal gymnastics as the Trump administration ironed out a game plan. Most doubted (correctly) that the Trump administration would stand behind the Obama administration's regulations.

The season finale was simply brilliant. On August 31st, the Texas trial court granted summary judgment for the states and business groups that had taken on the DOL. In a nutshell, the court dubbed the Obama administration's regulations "invalid" because the dramatic increase in the salary threshold effectively obliterated the "white collar" exemption "duties tests." *State of Nevada, et. al. v. United States Department of Labor, et. al.*, Case No. 4:16-cv-731 (E.D. Tex. August 31, 2017).

Game over (for now). Victory for employers (for now). A thrilling ending to a dramatic and emotional season. But what's next? Will the network renew for a Season Two?

Pre-production is ramping up. In July 2017, the DOL issued a Request for Information, soliciting public comment over a 60-day period on, among other FLSA issues, the salary threshold for exempt status. 82 Fed. Reg. 34,616 (July 26, 2017). Perhaps employers can breathe a sigh of relief; Secretary of Labor Alexander Acosta reportedly is of the opinion that the salary threshold for exempt status should be increased, just not to the \$913 per week level.

Interestingly, there remains some debate as to whether the DOL even has the authority to establish or increase a salary threshold for the "white collar" exemptions, so HR and employment law practitioners can look forward to that battle.

In light of the drama that has unfolded over the last 18 months, all I can say for now is stay tuned and fasten your seatbelt.

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