

Chapman Client Alert

September 22, 2016

Current Issues Relevant to Our Clients

States Seek to Block New DOL Overtime Rule

As explained in an earlier [Chapman Client Alert](#), on May 18, 2016, the Department of Labor (the “*Department*”) issued the final version of the Department’s rule codified at 81 FR 32391-01 (the “*Rule*”), which officially raises the salary basis threshold for “white collar” overtime exemptions to \$47,476 per year, or \$913 per week, increasing the applicability of the Fair Labor Standards Act to an additional 4.2 million employees and boosting employee wages by an estimated \$12 billion over the next 10 years. The new Rule is set to go into effect on December 1, 2016.

However, on September 20, 2016, 21 states¹ (the “*States*”) filed a suit² to block the Department’s Rule from going into effect. The four-count complaint pending in the Eastern District of Texas seeks a declaratory judgment that would prohibit the Rule from going into effect, or at least prohibit the Rule from applying to the States.

In a show of force, these States joined together to sue the Department for what they claim is an infraction on states’ rights. The States argue that under the premise of updating regulations related to the FLSA, the Department has disregarded the requirements of the statute and imposed an increased minimum salary threshold that applies without regard to whether an employee is actually performing “bona fide executive, administrative, or professional” duties.

The States also argue that by requiring the states to pay their employees as required by the new Department Rule, the Federal Executive can unilaterally deplete State resources, forcing the States to adopt or acquiesce to federal policies, instead of implementing State policies and priorities. Unlike businesses that may be able to adapt to the new wage requirements, the States argue that the States cannot reasonably rely upon a corresponding increase in revenue.

While the case is only in its infancy, the possible effect of this collective action could have vast consequences. The complaint requests several forms of relief, some of which would apply only to states, and some of which would apply to all employers regardless of location. Thus, it will be important for all employers to keep a watchful eye on the Department’s response to the suit and further developments.

For More Information

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1 The states include Nevada, Texas, Alabama, Arizona, Arkansas, Georgia, Indiana, Kansas, Louisiana, Nebraska, Ohio, Oklahoma, South Carolina, Utah, Wisconsin, Kentucky, Iowa, Maine, New Mexico, Mississippi, and Michigan (together, “*the States*”).

2 The case is captioned *Nevada, et al. v. U.S. Department of Labor et al.*, Case No. 1:16-cv-00407-RC, currently pending in the U.S. District Court for the Eastern District of Texas.