Chapman and Cutler LLP

Chapman Client Alert

November 28, 2016 Current Issues Relevant to Our Clients

Injunction Halts New Overtime Rule from Going into Effect

As previously reported in a Chapman Client Alert, 21 states (the *"States"*) sued[1] the Department of Labor (the *"Department"*) in the U.S. District Court for the Eastern District of Texas to block the Department's new overtime rule (the *"Rule"*), which would raise the salary basis threshold for "white collar" overtime exemptions from $455 per week ($23,660 annually) to $921 per week ($47,892 annually).[2] The Rule was scheduled to be implemented on December 1, 2016. On November 22, 2016, however, Judge Mazzant III issued a preliminary injunction halting the impending Rule from going into effect nationwide.

In their Motion for Preliminary Injunction, the States argued that according to the oft-cited *Chevron* case,[3] which illustrates when deference should be given to a federal agency in its rulemaking, the terms used by Congress were not ambiguous, and as such, are not allowed to be construed by the federal agency. As the Court explained, the FLSA exemptions are intended "to apply to employees doing actual executive, administrative, and professional duties. In other words, Congress defined the…exemption with regard to duties, which does not include a minimum salary level."[4] Thus, because the Rule states that "[w]hite collar employees subject to the salary level test earning less than $913 per week will not qualify for the EAP exemption, and therefore will be eligible for overtime, irrespective of their job duties and responsibilities,"[5] the Court found that that the Rule did not meet the first prong of the *Chevron* test, and that there was therefore a substantial likelihood of success on the merits.

While the Department argued that the only harm the States were able to prove was financial, which would be insufficient to grant an injunction, the Court agreed with the States that in addition to financial harm, the Rule would have a "detrimental effect on government services that benefit the public" because of budget constraints.[6] States would be faced with a tough choice of complying with federal law or cutting government services programs," and the Court found that that was enough irreparable harm to justify the injunction.

The Court also found that the Department did not articulate any harm it would suffer from delaying an implementation of the Final Rule, explaining that "if the Department lacks the authority to promulgate the Final Rule, then the Final Rule will be rendered invalid and the public will not be harmed by its enforcement. However, if the Final Rule is valid, then an injunction will only delay the regulation's implementation."[7]

The scope of the injunction was also at issue with the States arguing that it should be applied nationwide, while the Department argued that it should instead be limited to those states that brought the suit. The Court found that the injunction should be nationwide, because if the Department's exercise of power in promulgating the Rule was found to have been excessive, then the Rule would be void everywhere, not just in the particular states.

While by its very nature the ruling is only preliminary, Judge Mazzant III certainly made it known that ultimately he was likely to rule in the States' favor and strike the Rule. The Department may appeal the preliminary injunction ruling immediately and may be inclined to do so before there is a change in power in Washington. The injunction may also pave the way for a legislative compromise that would have phased in the salary limits over a longer period of time. Business advocates do not deny that they are open to some increase in the salary limits and may not want to oppose some form of compromise given the alternative is that a large swath of the working public would benefit from a salary increase. There will certainly be more to come on this front.

For More Information

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1 The case is captioned *Nevada v. Dep't of Labor*, Case No. 4:16-CV-00731 pending in the U.S. District Court for the Eastern District of Texas. The injunction opinion is available at ECF No. 60 (hereinafter, the *"Opinion"*).

2 While previous client alerts have reported different numbers, as time has progressed, the Department has shifted its numbers to reflect changes in projected earnings for the year.

3 *See Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

4 Opinion at 11.

5 Opinion at 12.

6 Opinion at 16.

7 Opinion at 17.

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