



## UPDATE! Status of DOL's Overtime Rule

12.12.2016 | By **John T. Kennedy**

On November 22, 2016, we reported on Judge Mazzant's nationwide injunction which prevented the Department of Labor (DOL) from implementing its new overtime rules on December 1, 2016. In issuing the injunction, Judge Mazzant found that the DOL exceeded its authority by increasing the minimum salary level contained in the regulations from \$455 per week to \$913 per week, as the use of the new threshold would supplant the duties tests and thereby exclude from exemption many bona fide executive, administrative, and professional employees under Section 13(a)(1) of the FLSA.

As anticipated, on December 1, 2016, the DOL filed an interlocutory appeal challenging the November 22 preliminary injunction. On December 2, 2016, the DOL filed a motion for an expedited briefing schedule for its appeal which was opposed by the plaintiffs/appellees and followed by the DOL's reply.

On December 8, 2016, the Fifth Circuit Court of Appeal granted the DOL's request for an expedited briefing schedule. The briefing schedule is (1) the appellants' opening brief and record excerpts are due on or before December 16, 2016; (2) amicus briefs in support of the appellants are due on or before December 23, 2016; (3) the appellees' response brief and record excerpts are due on or before January 17, 2017; (4) amicus briefs in support of the appellees are due on or before January 24, 2017; and (5) the appellants' reply brief is due on or before January 31, 2017. Oral argument will be held on the first available sitting of the Court convened after the close of briefing.

The Fifth Circuit's order was issued on the same day that President-elect Donald J. Trump announced his nominee for Secretary of Labor, the top position at the DOL, Andrew Puzder, a fast-food CEO who has been critical of the federal minimum salary level increase under the DOL's proposed final regulations.

Since the appeal will not be heard before the Trump Administration takes over, the appeal could be withdrawn by the new Trump administration or legislation passed by the new Congress nullifying the DOL regulation.

We will continue to keep you updated.

### **How Nossaman Can Help**

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