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Fair Labor Standards Act (FLSA) Legislation Update

On November 22, 2016, the US District Court for the Eastern District of Texas in the case of *State of Nevada, et al v. United States Department of Labor et al* issued a preliminary injunction enjoining the U.S. Department of Labor from implementing the revised FLSA overtime regulations on December 1st. The District Court concluded that the “significant increase to the salary level creates essentially a de facto salary-only test...Congress did not intend salary to categorically exclude an employee with (executive/administrative/professional) EAP duties from the exemption.” The District Court found that the Department of Labor lacked the authority to implement automatic updates to the salary basis threshold. The District Court also decided that a nationwide injunction was appropriate in this case since the regulations apply to all states. This decision has halted the implementation of changes that were scheduled to take effect on December 1st, at least temporarily.

The District Court found that when Congress established the exemption for executive, administrative, and professional employees, it intended it to be defined based on the duties being performed and not on a minimum salary level. A footnote states that “the Court is not making a general statement on the lawfulness of the salary-level test for the EAP exemption. The Court is evaluating only the salary-level test as amended under the Department’s Final Rule.” The District Court believed that the regulations conflicted with the intent of Congress and cited the following statement in the final rules - “white 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.” The District Court noted that only Congress and not the Department of Labor can decide that the salary requirement should “supplant the duties test.”

The Labor Department issued the following statement in response to the decision: “We strongly disagree with the decision by the court, which has the effect of delaying a fair day’s pay for a long day’s work for millions of hardworking Americans. The department’s overtime rule is the result of a comprehensive, inclusive rulemaking process, and we remain confident in the legality of all aspects of the rule. We are currently considering all of our legal options.”

At this time, it is unclear whether the Labor Department will appeal the decision to the US Court of Appeals or the Fifth Circuit. Also unknown is the position of the incoming administration of President Trump on this issue.

For Jackson County, this does not change that identified errors of misclassified employees and part-time employee timekeeping errors are to be corrected immediately. The Human

Resources Director is going to discuss with each Department Head the halting of the revised regulation and review all positions to notate the exempt or non-exempt status of the position under FLSA and review timekeeping methodologies to ensure that all hours worked are being accurately recorded and accrual of compensatory time is being tracked in accordance to Jackson County's compensatory time policy.