



# THE TEXAS MUNICIPAL LAW BULLETIN™

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## NEW OVERTIME REGULATIONS HALTED BY COURT, TEMPORARILY

The new Department of Labor (DOL) overtime rules increasing the minimum annual salary requirement for an employee to be exempt from overtime from \$23,660 to \$47,476, have been halted by a Texas federal district judge. This exempt salary threshold increase was scheduled to go into effect on December 1<sup>st</sup>, but will now be suspended until the trial on the rules occurs.

DOL rules have long included a two prong test to determine whether an employee is eligible for overtime: (1) the duties test; and (2) the minimum salary test. Prior to the recent rule change, the minimum salary was **\$23,660**. If an employee met both the duties test and the salary test, then the employee was considered exempt and the employer did not have to pay the employee time-and-a-half overtime pay for hours worked in addition to 40 hours in a seven-day work period. The DOL recently imposed a rule change to increase the minimum salary to **\$47,476**. The practical effect of this rule change was that employers all over the country, including cities, with employees who had been earning a straight salary for working more than 40 hours in a seven-day work period, were faced with two choices: (1) raise the salary of these exempt employees to meet the new minimum; or (2) treat the employees as non-exempt

and provide overtime pay when hours exceed the threshold.

21 states sued the DOL in federal court in the Eastern District of Texas challenging the DOL's authority to enact these rules. On November 22, 2016, the judge in the case granted the states a preliminary injunction stopping enforcement of the new rules. He granted the injunction based on the argument that the DOL exceeded its statutory authority when it raised the salary requirement without congressional approval. The increase in minimum salary is not void, just suspended for now.

Because this is not a final decision and has already been appealed by the DOL, cities who have already implemented changes related to the new rules have good reason to maintain the changes. Cities who have not implemented any changes, should wait and see what happens before considering any changes that are based solely on these rules. The firm will continue to issue bulletins updating clients and friends on this issue.

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