

THE OVERTIME BATTLE WAGES ON: 21 STATES FILE SUIT, CHALLENGING THE DOL'S NEW OVERTIME RULES

October 13, 2016

Author: Jennifer L. Swajkoski

On September 20, 2016, 21 states united to file suit against the United States Department of Labor (DOL) challenging the constitutionality of the new overtime rules it issued under the Fair Labor Standard Act (FLSA). The final rule is set to take effect on December 1, 2016.

On May 18, 2016, after years of anticipation and speculation, the Department of Labor issued its final rule addressing overtime wages under the Fair Labor Standards Act. In short, the rule increased the salary threshold at which employees were exempt from overtime pay, from \$23,660 to \$47,476. According to the DOL, under the final rule an estimated 4.2 million additional white collar workers will be newly eligible for overtime pay when the rules takes effect on December 1, 2016. Other sources, such as the Economic Policy Institute (EPI), estimate the final rule will impact closer to 12.5 million Americans.

The rule has elicited serious contention among employers, employees and members of the public, since President Obama first directed the DOL to update the regulations in 2014. In September 2016, the embers of that debate became full-fledged flames, when 21 states filed suit challenging the final rule. Those states are: Nevada, Texas, Alabama, Arizona, Arkansas, Georgia, Indiana, Kansas, Louisiana, Nebraska, Ohio, Oklahoma, South Carolina, Utah, Wisconsin, Kentucky, Iowa, Maine, New Mexico, Mississippi and Michigan. The U.S. Chamber of Commerce and other business groups also issued a challenge to the rule on the same day, in the same court.

At the heart of both challenges, are the increased salary requirements, automatic future salary increases and alleged federal overreach. According to the Plaintiffs' in both lawsuits, the DOL has exceeded its authority by increasing the salary threshold and by applying an automatic indexing mechanism, which adjusts the salary level every three years. Additionally, the States argue that the rule does not contain a limiting principle, which leads them to fear that by adopting the rule, the Federal Executive will be able to "deliberately exhaust [s]tate budgets" through enforcement of the rule and "reduce the States to mere vassals of federal prerogative."

IMPACT ON IDAHO EMPLOYERS

This new rule will impact non-profit organizations, government entities and for-profit companies that have lower-waged workers. The Idaho Division of Human Resources estimates that the new rule will impact about 2,000 state employees, but they anticipate it will not have as much of an impact on many large Idaho corporations since most of their management-level employees already make above the threshold. One Idaho employer, Girl Scouts of Silver Sage, has already started implementing policies and procedures that will allow them to abide by the new rule.

For instance, they have implemented new policies regarding commute times, off the clock phone calls and they purchased an electronic time keeping system to manage overtime.