



Navigating you through the various legal employment and business issues that your Company encounters as you journey to business success!

Navigational Beacon

A Simon | Paschal PLLC Publication

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TX Court Halts New Overtime Rule

On November 22, 2016, U.S. District Judge Amos L. Mazzant of the United States District Court for the Eastern District of Texas (Sherman Division) issued a preliminary injunction halting implementation of the new overtime rules that were set to go into effect on December 1, 2016.

As you aware, following a notice and comment period, the U.S. Department of Labor issued a Final Rule regarding the so-called “white collar” overtime exemptions. The rule, set to go into effect on December 1, 2016, increased the required salary level for the executive, administrative and professional exemptions to the Fair Labor Standard Act’s overtime requirements.

On October 12, 2016, Texas and twenty other states challenged the rule via an emergency motion for preliminary injunctive relief to halt implementation of the rule. The Plano Chamber of Commerce and more than fifty other business organizations filed their own lawsuit that was later joined with the states’ lawsuit for purposes of the motion for preliminary injunction. As previously stated, the Court granted the states’ motion and issued a preliminary injunction. *(cont’d on Page 3)*



Want More Info?

Visit our firm website at www.SimonPaschal.com and click the “Resources” tab to find past issues of the quarterly newsletter as well as our blogs on various issues. You can also find info on our YouTube channel at www.youtube.com/SimonPaschalPLLC.

You can also listen to our weekly radio show, *The Jury Is Out*, each Wednesday at 10am on www.KVGIRadio.com or by downloading the KVGI Radio app on Apple or Android devices.

Disability Forms Not Necessarily Controlling for Reasonable Accommodations

In October, the 5th Circuit Court of Appeals issued a ruling regarding Americans with Disabilities Act (ADA) reasonable accommodations situations. The case was *EEOC v. Vicksburg Healthcare, L.L.C.* In that case, the EEOC sued the employer healthcare facility on behalf of one of its nurse employees. The nurse tore her rotator cuff and took 12 weeks of FMLA leave. Afterward, her doctor sent her employer a note indicating she could return to work as long as the work was “light work” that required “limited use” of her left arm.

After reviewing the limitations, the employer terminated the nurse due to her inability to perform work. The next day, the nurse applied for temporary disability benefits and indicated she was temporarily totally disabled. After being sued, the employer alleged that her application for disability benefits and the assertion that she was temporarily totally disabled contradicted her assertion that she was qualified under the ADA because she could perform the job with a reasonable accommodation.

The District Court initially found for the employee but the 5th Circuit Court of appeals reversed the decision because it said the employee’s two statements were consistent. She could be both totally disabled AND able to perform her job with a reasonable accommodation. The 5th Circuit noted that the disability form did not address reasonable accommodations.

So, the takeaway for employers is that merely because an employee indicates a total disability on a disability insurance form, the employer is not relieved from engaging in the reasonable accommodation interactive discussion and providing a reasonable accommodation if one exists. Employers cannot simply rely on disability insurance claim statements and refuse to accommodate.



Race Discrimination Lawsuit Against CNN/TBS

Approximately two dozen current and former CNN and TBS employees filed a lawsuit against Turner Networks in which they seek class action status and claim that racial discrimination held them back. Specifically, they claimed a systemic problem with “discriminatory practices being implemented throughout all of Turner’s Networks [sic]...”

They cited statistics showing black employees promoted at a much lower rate than white employees and that black employees historically received lower scores on their evaluations than white employees did. They attributed the lower promotion rate to formal written and unwritten policies and practices regarding promotions. They alleged practices and policies that kept black employees from being promoted and prevented them from taking action.

The employees that sued claim that dozens of additional employees have made contact and expressed a desire to join the lawsuit.

While this case is still pending and discovery has not yet been done and we do not know the outcome, it serves as a reminder to employers that they need to be mindful of potential disparate impact discrimination claims that can result from seemingly race-neutral policies and procedures that nevertheless have a disparate impact on minorities or other protected categories of employees. This most often arises in test and promotion situations.



Another great Simon | Paschal client

Client Spotlight

Lime Media Group is a marketing and advertising company that creates mobile display vehicles and touring advertising trucks. They also provide out-of-home advertising and event marketing services that directly engage consumers in almost any location or environment using a variety of techniques and approaches. We are proud to have Lime Media Group as a client and we appreciate the faith they put in us on a daily basis. Check out more about this unique company at www.lime-media.com.

Andy Puzder Receives Labor Secretary Nomination

President-Elect Donald Trump recently appointed Andy Puzder to serve as his Secretary of Labor. Puzder is the current Chief Executive Officer of CKE Restaurants, Inc. (which operates Hardee's and Carl's Jr.). Puzder previously served as an economic advisor to Mitt Romney's presidential campaign. Puzder is a former practicing lawyer who previously served as CKE Restaurants' General Counsel before becoming its CEO. He is on record as being against the recently halted overtime regulations and against an increase in the federal minimum wage. While he is considered a somewhat controversial pick, he is certain to be very pro-employer and business friendly and employers can expect efforts to ease regulatory requirements and rules affecting employers.



(cont'd from Page 1) The Court issued the injunction on a nationwide basis and ordered that the final rule outlined above could not go into effect until further order of the Court. The Court found that the states satisfied the elements necessary to receive a preliminary injunction – (1) a substantial likelihood of success on the merits of the underlying action, (2) irreparable harm, (3) the threatened injury outweighs any damage caused by the injunction and (4) the injunction will not disserve the public interest. With respect to the first element, the Court found that Congress' intent was clear that the “white collar” exemptions applied to employees “doing actual executive, administrative, and professional duties” and that the exemptions did not include a minimum salary level. Thus, according to the Court, the exemption depends on an employee's duties, not the employee's salary. As such, the Court found a substantial likelihood of success on the merits. The Court also found the states satisfied the remaining three elements. In early December, the DOL filed an expedited appeal and the 5th Circuit Court of Appeals ordered all briefing completed by January 31, 2017.

What This Means

As a result of the Court's order, the current “white collar” exemptions ARE NOT changing until further order from the Court. This means the executive, administrative and professional exemptions will retain their \$455 per week (\$23,660 annually) salary requirement.

While legal results and legislation can never truly be predicted, it is a safe bet that the “white collar” exemptions will remain unchanged for the foreseeable future. This is so because as of January 20, 2017, the Republicans will control the House of Representatives, Senate and the White House and as a party, they are opposed to the changes. As such, a Trump Administration likely will decide to withdraw the appeal and abandon further pursuit of this action. Even if it did not, the 5th Circuit is likely to uphold Judge Mazzant's decision.

What Employers Should Do Now

For employers that took no action in response to the previous impending changes, there is nothing to do. For those that took action to prepare, they potentially now must take action.

Every employer's situation is different and we encourage you to contact your lawyer to discuss your specific situation. If you raised salaries to maintain the exemptions, you must determine if you now wish to lower those salaries to their previously set levels. There is no legal prohibition that prevents you from doing so but you must determine if it is the right decision for you based on morale and employee engagement.

If you did not raise salaries but instead transitioned previously exempt employees to non-exempt status, you can and should switch them back to exempt status (although there is no requirement to do so). As a side note, it is never a bad thing if an exempt employee tracks their time so you can make a determination as to whether you want to continue that requirement.

Simon | Paschal PLLC Happenings

Dustin and Paul presented a total of five times at this year's HRSouthwest Conference in Fort Worth, TX and Dustin later presented to the Dallas CPA Society. In January, Dustin will be speaking to the Dallas Fort Worth Association Executives.

In addition to his work at the firm, Paul will begin his term as the President of the Dallas Association of Young Lawyers on January 1, 2017. Great things are in store for that organization this coming year!

Also, Paul and Dustin are again sponsoring and working on the Texas Big Star Half Marathon & 5K, which will take place on April 15, 2017.

The small print: The contents of this newsletter are not intended to provide specific legal advice and you should not take any action based on the content of this newsletter without seeking legal counsel. If you have specific questions, please contact a lawyer, preferably us!

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