



## Breaking News: DOL's Final Rule on Overtime Exemptions Delayed

On November 22, 2016, a federal judge in Texas has delayed the implementation of the U.S. Department of Labor (DOL) new overtime rule set to take effect Thursday, December 1, 2016. The “white collar” exemption salary level was set to increase from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476 per year) under the Fair Labor Standards Act (FLSA).

### Delayed Implementation

Twenty-one states filed an emergency motion for a preliminary injunction in October to put the brakes on the ruling citing that the new salary threshold was too high. “A preliminary injunction preserves the status quo while the court determines the department’s authority to make the final rule as well as the final rule’s validity,” said Judge Amos Mazzant of the U.S. District Court for the Eastern District of Texas in a Nov. 22 ruling.

### Next Steps for Employers

With the delayed implementation of the Final Rule this allows employers additional time to use the current overtime regulations; this ruling could still be implemented later down the road, so what now? Employers should still take care to ensure they have employees properly classified under the current ruling; which is not just about salary but also about the duties your employees perform.

1. If there are exempt employees who were going to be reclassified to nonexempt, but have not yet been informed, employers may want to postpone those discussions until this plays out in the courts and a final decision is made.
2. Employers should not assume that the overtime rule will not be implemented and still have a plan in place to move forward if necessary.
3. Review your job descriptions now to determine whether they are still accurate and reflect the job being performed and the skills needed to perform the job. Review employees’ actual job duties to ensure that they still fall within the administrative, executive, professional, computer, or outside sales exemptions.
4. Review current employee classifications to ensure that your “non-exempt” employees are properly classified.
5. When evaluating your employees’ status, keep in mind that not every employee who receives a salary is automatically exempt — they must also perform exempt duties. You should assess an employee’s day-to-day duties to determine whether or not those duties fall within the FLSA’s exemption requirements. There will likely be some employees that fall into a “gray area,” whose status will not be easy to determine. In such cases, we suggest erring on the side of non-exempt status, keeping in mind that the employer bears the “burden of proof” that an employee is exempt from overtime.

*This content is provided with the understanding that HR Knowledge is not rendering legal advice. While every effort is made to provide current information, the law changes regularly and laws may vary depending on the state or municipality. The material is made available for informational purposes only and is not a substitute for legal advice or your professional judgment. You should review applicable laws in your jurisdiction and consult experienced counsel for legal advice. If you have any questions regarding this advisory, please contact HR Knowledge at 508.339.1300 or [email us](#).*