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### **Labor and Employment Alert: Federal Court Invalidates the Department of Labor's Overtime Rule**

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On August 31, 2017, the federal district court in Texas invalidated the U.S. Department of Labor's (DOL) overtime rule. That rule would have raised the salary threshold to be considered an overtime-exempt employee to \$47,476 per year (and to \$134,000 for highly compensated individuals). These salary levels also would have automatically increased with inflation. The rule was scheduled to go into effect in December 2016, but has been on hold since November 2016 when the court enjoined the rule which prevented its implementation.

In *State of Nevada v. United States Department of Labor*, the district court found that Congress had clearly and unambiguously defined the executive, administrative, and professional overtime exemption with regard to duties. The court noted the DOL has the authority to determine "the essential qualities of, precise signification of, or marking the limits of those bona fide executive, administrative, or professional capacity employees who perform exempt duties and should be exempt from overtime pay." But the DOL "does not have the authority to use a salary-level test that will effectively eliminate the duties test" or that will "categorically exclude" those who perform exempt duties based on salary level alone.

The court explained that DOL's "significant increase" in the salary threshold "would essentially make an employee's duties, functions, or tasks irrelevant if the employee's salary falls below the new minimum salary level." This meant that entire categories of previously exempt employees performing executive, administrative, or professional duties would not qualify for the exemption based on salary alone. The DOL's rule "makes overtime status depend predominately on a minimum salary level, thereby supplanting an analysis of an employee's job duties." "This is not what Congress intended." Therefore, the court held, the rule is invalid.

While the court invalidated the DOL's rule, it did not invalidate all use of the salary-basis test. The court recognized that the DOL does have the authority to implement a salary-level test (just not at the level in the rule at issue). The DOL previously appealed the court's injunction to the

Fifth Circuit Court of Appeals; in its appeal, the DOL asked the court to affirm the DOL's authority to use a salary threshold in determining overtime eligibility. The DOL's appeal remains pending (with oral argument scheduled for October 2017), but will likely be withdrawn given the district court's ruling. It is also likely that the DOL will promulgate a new rule with a salary threshold that is higher than the current \$455/week. What that proposal will be remains to be seen. Contact your Vorys lawyer if you have questions about this case or about wage-hour compliance in general.