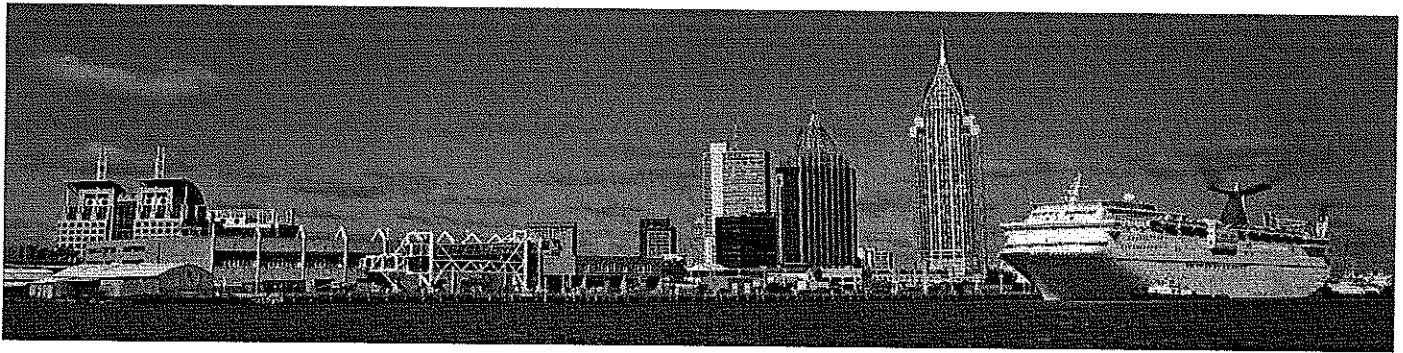




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SPECIAL BULLETIN:

DOL'S DECEMBER 1, 2016 PROPOSED CHANGES HALTED BY THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS

On November 22, 2016, the Honorable Amos L. Mazzant, a United States District Judge for the Eastern District of Texas, issued an Order Granting a Temporary Nationwide Injunction, halting the Department of Labor (DOL's) impending December 1, 2016 implementation of drastic changes to the Fair Labor Standards Act's "white collar exemptions." The new regulations would have doubled the minimum salary level required for executive, administrative and professional employees to be considered exempt from the FLSA's overtime requirements, from over \$23,000 to over \$47,000.

For several months, the DOL's far-reaching change in minimum salary level has caused businesses turmoil in determining whether to change pay structures by raising employees to a higher annual salary to maintain the exemption or reclassify employees as non-exempt, therefore entitling those employees to overtime pay for hours worked in excess of 40 in a work week. Employers have also been grappling with a more emotional aspect of the change: a concern expressed by many employees that being reclassified as non-exempt, and forced to track their hours would amount to a "step back" in their careers, if not an outright demotion, and would result in a loss of flexibility in their daily work habits.

In issuing the injunction, the court correctly stated that whether an employee is subject to a white collar exemption consists of three factors: 1) a duties test, 2) payment on a salary basis, and 3) a minimum salary. The court found, however, the DOL overstepped its authority by "raising the minimum salary level such that it supplants the duties test," a role that falls squarely into Congress's domain and not the DOL's, and concluded the "significant increase to the salary level creates essentially a de facto salary-only test." Additionally, the Court found that the DOL lacked the authority to automatically update the salary level every three years, another requirement of the DOL's impending rule.



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Employers must remember that this is only a preliminary injunction, although a nationwide one, enjoining the DOL's rule from going into effect on December 1, 2016. The litigation will proceed and appeals are likely.

Very truly yours,

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The Kullman Firm was founded in 1946 with one area of practice and one focus: Labor and employment law on behalf of management, including traditional labor law, state and federal employment laws, employment discrimination laws and employee benefits laws.

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