



## **Department of Labor – Overtime Rule on Hold**

### *Guidance for Beverage Retailers*

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#### **UPDATE:**

On Tuesday, November 22, U.S. District Court Judge Amos L. Mazzant III issued a preliminary injunction halting the December 1, 2016 implementation of the Department of Labor's (DOL) new overtime rule.

#### **KEY TAKEAWAYS:**

Judge Mazzant rejected the DOL's efforts to move ahead with implementation, arguing that the overtime rule change exceeded the department's mandate under the Fair Labor Standards Act, and that Congress – not the DOL – should be the authority when it comes to whether such a rule change is ultimately implemented.

Judge Mazzant noted “If Congress intended the salary requirement to supplant the duties test, then Congress and not the department should make that change,” per *Bloomberg*. While the injunction is only a temporary measure that suspends the regulation until the judge can issue a ruling on the merits, many have said the judge's language indicated he is likely to strike down the regulation. With President-Elect Trump promising to overturn several regulations implemented during the Obama administration – coupled with Republican control of both the House and Senate – the fate of the new rule remains in question.

#### **ABL POSITION:**

Earlier this year and before the November elections, ABL supported legislation ([H.R. 5813](#)) that would incrementally phase in the new salary threshold over the next three years to give businesses adequate time to adjust to the new standard, while also eliminating a provision that allows for automatic updates to the salary threshold every three years. ABL was also supportive of bipartisan legislative efforts to delay implementation of the rule for six months. With a new political dynamic coming to Washington in January, ABL will evaluate supporting anticipated legislative initiatives to more permanently address this matter.

#### **BACKGROUND:**

In 2014, President Obama directed the Department of Labor (DOL) to update the regulations defining which white collar workers are protected by the Fair Labor Standards Act's (FLSA) minimum wage and overtime standards, and to look for ways to modernize and simplify the regulations while ensuring that the FLSA's intended overtime protections are fully implemented. The DOL subsequently published a Notice of Proposed Rulemaking (NPRM) and accepted more than 290,000 public comments.

On May 18, 2016, the White House announced the publication of the Final Rule. According to the Administration, the rule will extend overtime eligibility to more than 4 million additional workers within the first year of implementation. The Final Rule updates the salary and compensation levels needed for Executive, Administrative and Professional workers to be exempt. Specifically, it:

1. Increases the minimum salary level for “white collar” employees to qualify as exempt from overtime pay requirements from \$23,660 to \$47,476 a year, or from \$455 to \$913 a week. The rule will not affect hourly or other non-exempt workers who are already eligible for overtime pay;
2. Automatically updates the salary and compensation threshold every three years. The first update would be Jan. 1, 2020. The DOL projects a salary threshold of \$51,000 by Jan. 1, 2020; and
3. Allows employers to apply nondiscretionary bonuses and incentive payments (including commissions) to up to 10 percent of the new salary level.