
A Round and Round We Go . . . The Department of Labor Announces a New White Collar Exemption Rule is in the Works

By Scott Cruz / Oct 31, 2017

As Clark Hill [reported](#) on August 31, 2017, a federal district court in Texas issued its final ruling in *State of Nevada v. United States Department of Labor* that invalidated the Department of Labor's ("DOL") white collar exemption rule. The proposed overtime rule would have raised the white collar overtime exemption to \$47,476. On October 30, 2017, the DOL appealed the August 31, 2017 federal district court's ruling that invalidated the previously proposed white collar exemption rule to the Fifth Circuit Court of Appeals (covering Louisiana, Mississippi, and parts of Texas). With its appeal, the DOL simultaneously requested that the Fifth Circuit "hold the appeal in abeyance while the Department of Labor undertakes further rulemaking to determine what the salary level should be."

The DOL's strategy of filing the appeal, then requesting that the Fifth Circuit hold the appeal in abeyance, likely was done to permit the DOL more time to rewrite a new proposed overtime rule. Indeed, as [reported](#) by Clark Hill on August 17, 2017, in July 2017, the DOL issued a Request for Information ("RFI") seeking comments on what, if any, increase it should make to the minimum salary requirement of the white collar exemptions. In response to the RFI, the DOL received nearly 140,000 comments that it is still in the midst of reviewing.

If the Fifth Circuit grants the DOL's motion to hold the appeal in abeyance, and in the interim the DOL proposes a new white collar exemption rule, it is believed that the DOL will then file a motion with the Fifth Circuit arguing that based on the new proposed rule, the litigation over the issue is moot. If the DOL issues a new proposed overtime rule, it is expected that new salary level will be somewhere in the low \$30,000 range. We will continue to monitor any proposed changes to the overtime rules and to update you on any important developments.

If you have any questions regarding the FLSA overtime regulations and/or the DOL's Request for Information, please contact Scott Cruz or another member of Clark Hill's Labor and Employment Law practice group.