

Update and New Action on Overtime Rule

As you know all too well, the Labor Department's new overtime rule is scheduled to take effect on December 1st, 2016. Thanks to the active involvement of the business community, including many of you, the final rule was somewhat improved from what they first proposed: the minimum salary threshold was lowered from \$50,400 to \$47,476; the automatic increase in the salary was changed from annual to every three years, for the first time they are allowing commissions to satisfy at least a small part of the minimum salary, and the effective date was pushed back to December from July.

Despite these marginal improvements, the final rule is still wholly unacceptable, and we continue our efforts to improve or repeal it.

In the courts:

Last Tuesday, NAW (of which FEDA is a member) joined 56 co-plaintiffs in filing a complaint in U.S. District Court for the Eastern District of Texas challenging the rule. Their complaint attacks the new salary threshold, alleging the Department of Labor (DoL) fundamentally departed from Congressional intent in enacting the FLSA and from decades of regulatory policy in setting the new minimum salary level for exemption.

Additionally, NAW's complaint challenges the validity of the automatic escalator, alleging that because it "departs from the terms of the FLSA" it "exceeds any authority granted to the Department by Congress, which has never authorized automatic escalation of salary thresholds related to overtime under the FLSA."

NAW's complaint asks the Court to vacate and set aside the new overtime rule and to postpone its effective date (thus maintaining the status quo) pending the Court's review and action in this case.

To read the complaint, go to: <https://www.naw.org/files/OT-Rule-Complaint.pdf>

In a separate development on the same day, 21 states filed a lawsuit in the Eastern District of Texas that asks the court to issue an injunction preventing the new overtime rule from taking effect. Like our complaint, the states' lawsuit also challenges DoL's authority to automatically index the salary threshold. Co-plaintiffs in the states' lawsuit are Alabama, Arizona, Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Nebraska, Nevada, New Mexico, Ohio, Oklahoma, South Carolina, Texas, Utah and Wisconsin.

On Capitol Hill:

Meanwhile, NAW and their allies in the Partnership to Protect Workplace Opportunity are continuing our legislative attack on the new overtime rule with vigorous advocacy of H.R. 5813, Overtime Reform and Enhancement Act, bipartisan reform legislation that would phase in the increase in the salary threshold and repeal the automatic escalator. H.R. 4773/S. 2707, Protecting Workplace Advancement and Opportunity Act are more sweeping bills that have attracted the support of several GOP Senators

and House Members. And, finally, introduced just last week, H.R. 6094 would delay for six months the effective date of the new rule.

While we remain a long way from actually getting legislation passed by both houses of Congress, the bipartisan nature of this effort is encouraging.

NAW (and FEDA) will of course keep you apprised of developments in both the litigation and legislation efforts.