

PUBLICATION

Fifth Circuit Agrees to Fast-Track DOL's Overtime Appeal

December 09, 2016

Late last month, we brought you breaking news that a federal court in Texas had granted a preliminary nationwide injunction blocking the enforcement of the Department of Labor's Final Overtime Rule. The December 1, 2016 deadline for complying with the Final Rule became obsolete.

Not surprisingly, the DOL quickly noted its appeal of the federal court decision, but the appeal process can be time-consuming. Generally, a notice of appeal requires the record from the lower federal court to be prepared and transmitted to the appeals court which can take several weeks. Then a schedule for briefing the case is issued typically allowing for 30 days, followed by a hearing for oral argument several weeks, or even months, after that. Wishing to bypass this lengthy process, Labor Secretary Thomas Perez in bringing the appeal filed a motion for an expedited hearing or a motion for a stay (which would essentially override the preliminary injunction and make the Final Rule take effect).

Yesterday, the Fifth Circuit granted the DOL's motion for an expedited hearing. The Court issued an order setting December 16 as the due date for the DOL's opening brief and January 24 as the due date for the response brief from the states and business groups. The final reply brief from the DOL is due January 31. The Court's order also explained that it will schedule oral argument for the first available sitting after the close of briefing, which is expected to be sometime in mid- to late-February.