

STATES SUING DOL OVER NEW OVERTIME RULES

Twenty-one states are [suing](#) the Department of Labor over new overtime rules which make it more likely states will have to pay more employees' overtime. They are seeking an injunction which will prevent the new rules from going into effect on December 1, 2016.

Per the Fair Labor Standards Act (FLSA), "white collar" employees do not have to be paid overtime if they work more than 40 hours a week. Per Department of Labor regulations, adopted shortly after the FLSA was adopted in 1938, employees must perform specific duties and earn a certain salary to be exempt from overtime as white collar employees.

On May 23, 2016, the Department of Labor (DOL) issued final rules nearly doubling the previous salary level test for white collar employees from \$455 per week, or \$23,660 per year to \$913 per week, or \$47,476 per year.

DOL also raised the salary threshold for highly compensated employees (who aren't eligible for overtime no matter their job duties) from \$100,000 per year to \$134,004 per year. The rules automatically update the salary level every three years for white collar and highly compensated employees.

As a practical matter the states object to these rules because they will cost more money and states "cannot reasonably rely upon a corresponding increase in revenue, [so] they will have to reduce or eliminate some essential government services and functions."

In its complaint the states make five arguments for why the Texas federal district court should grant their injunction. Its first and most ambitious argument is that the Court overturns [Garcia v. San Antonio Metropolitan Transit Authority](#) (1985), where the Court held that the FLSA applies to the states.

The states also argue that DOL has exceeded its authority under the FLSA in issuing these rules by ignoring the duties an employee performs and making salary a litmus test.

By automatically increasing the salary basis test DOL is violating the FLSA's requirement to "define and delimit from time to time" the white collar exception, the states claim.

As in almost any lawsuit objecting to federal rules, the states argue the rules are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

Finally, the states claim that Congress improperly delegated congressional legislative power by conferring "unlimited legislative authority on DOL" in the FLSA.

Lisa Soronen

Executive Director

State & Local Legal Center