

EMPLOYMENT SERVICES ALERT

12/12/16

Fifth Circuit Court of Appeals Grants Department of Labor's Request for Expedited Briefing and Oral Argument Schedule

By ***Stephanie Y. Olivera***, Associate

On December 8, the United States Court of Appeals for the Fifth Circuit granted the Department of Labor's ("DOL") motion for an expedited briefing and oral argument schedule in its appeal of the District Court's grant of a nationwide injunction against the implementation of the new Fair Labor Standards Act ("FLSA") overtime regulations.

Since the District Court's issuance of a nationwide preliminary injunction barring the enforcement of the new FLSA regulations, there has been no shortage of developments. Following the DOL's Notice of Appeal on December 1, the DOL filed a motion seeking an expedited briefing and oral argument schedule on December 2. In response — and as expected — on December 5, the appellees strongly opposed the expedited appeal. As a matter of course, the DOL replied further in support of its request on December 6.

The first briefing deadline is set for December 16, and briefing is set to close no later than January 31, 2017. Following the expedited briefing schedule, oral argument is set to be scheduled for the first available sitting day after the close of briefing.

The question now is how significant is this victory for the DOL? In light of the incoming Trump administration and a newly-appointed Secretary of Labor, maybe it is no victory at all. Following President-Elect Trump's swearing-in on January 20, 2017, all cabinet nominees will be presented to the Senate for confirmation. With a Republican Senate, it is likely that Trump's nominees, including the newly appointed labor secretary, will be confirmed before the close of briefing and oral argument. If this in fact happens, the DOL will be celebrating a hollow victory. This becomes especially true following President-Elect Trump's nomination of Andrew Puzder as his labor secretary. Puzder has publically expressed strong positions against the DOL's proposed overtime rule in its current form. If confirmed, it is expected that Puzder will withdraw the appeal.

If you have any questions about this topic, read our **[previous alert](#)** or contact one of the listed Roetzel attorneys.

Author

Stephanie Y. Olivera
solivera@ralaw.com

Additional Contacts

Douglas E. Spiker
dspiker@ralaw.com

Karen D. Adinolfi
kadinolfi@ralaw.com

Matthew D. Austin
maustin@ralaw.com

Aretta K. Bernard
abernard@ralaw.com

Robert E. Blackham
rblackham@ralaw.com

Eric G. Bruestle
ebruestle@ralaw.com

Helen S. Carroll
hcarroll@ralaw.com

G. Frederick Compton Jr.
fcompton@ralaw.com

Denise M. Hasbrook
dhasbrook@ralaw.com

Philip S. Heebsh
pheebsh@ralaw.com

Paul L. Jackson
pjackson@ralaw.com

Douglas M. Kennedy
dkennedy@ralaw.com

Jay E. Krasovec
jkrasovec@ralaw.com

Jonathan Miller
jdmler@ralaw.com

Ian A. Northon
inorthon@ralaw.com

Nathan Pangrace
npangrace@ralaw.com

Marcus A. Pringle
mpringle@ralaw.com

Arthi G. Siva
asiva@ralaw.com

Brian A. Tarian
btarian@ralaw.com

Timothy J. Webster
twebster@ralaw.com

Emily Ciecka Wilcheck

ewilcheck@ralaw.com

Ericka L. Adler
eadler@ralaw.com

Mazen Asbahi
masbahi@ralaw.com

Brian T. Bedinghaus
bbedinghaus@ralaw.com

Michael B. Brohman
mbrohman@ralaw.com

Avery Delott
adelott@ralaw.com

David J. Hochman
dhochman@ralaw.com

Lee Levin
llevin@ralaw.com

Media Contacts

Wendy Castorena
wcastorena@ralaw.com

Ashley McCool
amccool@ralaw.com