

Injunction puts employers' overtime plans on hold

By VALERIE WELLS The Daily News | Posted: Saturday, December 3, 2016 11:00 pm

Many companies prepared to comply with a new overtime pay regulation are leaning toward staying with their old practices since a federal court blocked its implementation.

The U.S. District Court in the Eastern District of Texas granted a nationwide preliminary injunction Nov. 22 that prevents the Department of Labor from implementing the changes until the rule's legality can be further examined. The order comes after 21 states sued to block the rule before it took effect on Dec. 1.

The new regulation would have required employers to pay time-and-a-half overtime to most salaried workers earning up to \$47,476 when they work more than 40 hours during a week, doubling the threshold. The previous cutoff for overtime pay was \$23,660.

Overtime pay is at least one-and-a-half times a worker's usual pay rate.

University of Texas Medical Branch, Galveston's largest employer, has 236 employees that the new regulation would affect.

UTMB is delaying proposed salary increases.

"We will monitor the progress of the judicial process and further statements from the Department of Labor," a statement from the school said. "Further decisions will be driven by those outcomes."

The Sunflower Bakery & Cafe, 512 14th St., Galveston, doesn't have any employees who are affected, owner Lisa Blair said. The bakery only has a couple of managers, and they earn a salary above the \$47,476 threshold. All other employees are hourly.

"We always pay overtime — always," Blair said.

The Galveston Restaurant Association is doing a cost analysis to help its members decide how to act. Many restaurant owners on the island are still deciding whether to give employees raises to the \$47,000 level or to put them on an hourly pay rate, said Denise Vargas Escobar, president of the association.

"It's kind of a gray area for us," she said.

A concern is that some managers might see salary adjustments as a demotion.

"We don't want people underworked and overpaid," she said. And they also don't want employees overworked and underpaid, either. "We're still just trying to figure it out."

Three employees fall into the gray area at Rudy & Paco, 2028 Postoffice St., a Galveston restaurant that her father, Paco Vargas, owns.

Several other restaurants in the association also have two or three employees affected, Vargas Escobar said.

“As an association, we want to do what is beneficial for our employees,” she said. “If they are happy, we are happy.”

The doubling of the salary threshold was the biggest complaint clients told Charles Dunkel, an employment attorney with Galveston law firm Mills Shirley LLP.

“Just today, I have had this conversation four times,” Dunkel said. A majority of the employers he’s talked to are holding off from implementing changes just yet.

The Department of Labor did it backward, Dunkel said. Instead of starting with a significant initial increase with small increments to follow over time, the small increments should have happened first, building up to the higher threshold, he said.

Some businesses were still weighing their options this week, deciding whether to go ahead with planned changes or not.

“Right now, a lot of us are looking at how the injunction affects our plans,” said Vic Pierson, president of Galveston-based Moody National Bank.

The overtime overhaul would have affected about 20 percent of the 97 exempt employees at the bank, which employs a total of 223 people. The bank had made changes to fully comply with the regulation. Even in the final days of November, Pierson was not sure if the bank would go ahead with the changes or not.

The League City Regional Chamber of Commerce held workshops to help members plan for expected changes, but the organization was in support of the lawsuit to stop it, said Steve Patterson, chamber president.

“It needs a lot more examination,” Patterson said. “We do feel at this point the actual law should have congressional approval.”

With the injunction coming two days before Thanksgiving, many employers might not fully understand the regulation is on hold, Dunkel said.

“I would have expected more calls,” he said.