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DOL's OT Rule Strategy May Leave Employers In Limbo, *Law360, ft. Lori Adelson*

Lori Adelson, partner in KD's Ft. Lauderdale office, was quoted in a Law360 article by Vin Gurrieri.

Law360, New York (August 29, 2017, 7:41 PM EDT) — The U.S. Department of Labor's decision not to ask the Fifth Circuit to pause a challenge to an injunction freezing the Obama administration's controversial overtime rule while the agency crafts a replacement means the 2016 regulations could get a green light before a replacement rule is ready, creating a potential compliance nightmare for employers.

Finalized in the last year of President Barack Obama's term, the regulation in question broadened federal overtime pay regulations to cover nearly 4 million more people, raised the minimum salary threshold required to qualify for the Fair Labor Standards Act's "white collar" exemption to just over $47,000 per year and increased the overtime eligibility threshold for highly compensated workers from $100,000 to about $134,000.

But just days before it was scheduled to take effect on Dec. 1, 2016, U.S. District Judge Amos Mazzant granted a request for a preliminary injunction by numerous states that had challenged the rule. The Obama administration appealed the ruling before President Donald Trump was sworn in.

Lori Adelson, a partner at Kaufman Dolowich Voluck LLP, categorized the DOL's decision as "very clever" and not an oversight by the agency. She says the agency is essentially giving itself multiple paths for changing the rule through either a summary judgment ruling in its favor in the litigation or through the rulemaking process.

"With Acosta in place, the goal is to figure out how to make the rule different," Adelson said, adding that the issue over whether the DOL had the authority to use a salary test "needs to be resolved" one way or another.

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