

WS&Co. Briefing

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HIPAA Audit Email Scam and New DOL Overtime Rule Blocked

HHS Alert: Phishing Email Disguised as HIPAA Audit Notice

On November 28, 2016, the Department of Health and Human Services (HHS) issued an alert that a phishing email has been circulating to employer inboxes on “mock” HHS letterhead. The email appears to be an official government communication about the HIPAA audit program and directs recipients to click a link to a non-HHS website. **Do not click the link.** Instead, employers are encouraged to contact the HHS Office for Civil Rights (the subgroup that performs HIPAA audits) at OSOCRAudit@hhs.gov to verify the authenticity of the HIPAA audit communication.

The full text of the HHS alert is below:

It has come to our attention that a phishing email is being circulated on mock HHS Departmental letterhead under the signature of OCR’s Director, Jocelyn Samuels. This email appears to be an official government communication, and targets employees of HIPAA covered entities and their business associates. The email prompts recipients to click a link regarding possible inclusion in the HIPAA Privacy, Security, and Breach Rules Audit Program. The link directs individuals to a non-governmental website marketing a firm’s cybersecurity services. In no way is this firm associated with the U.S. Department of Health and Human Services or the Office for Civil Rights. We take the unauthorized use of this material by this firm very

seriously. In the event that you or your organization has a question as to whether it has received an official communication from our agency regarding a HIPAA audit, please contact us via email at OSOCRAudit@hhs.gov.

Source—Alert: Phishing Email Disguised as Official OCR Audit Communication – November 28, 2016

<http://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/audit/index.html>

Federal District Court Judge Blocks DOL’s New Overtime Rule

On November 22, 2016, a Texas district court judge issued an injunction that blocks the Department of Labor’s (DOL’s) new overtime rule, pending legal review of the suit brought by 21 states challenging the new overtime rule.

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The DOL's new overtime rule, which raises the minimum annual salary from \$23,660 to \$47,476 (among other things), would have gone into effect on December 1, 2016. The judge's injunction effectively blocks the overtime rule on a nationwide basis and essentially pushes back the December 1, 2016 effective date until a final ruling is issued.

What Should Employers Do Now?

Many employers have already either reclassified their employees to non-exempt status and/or raised salaries to the new \$47,476 minimum threshold in anticipation of the overtime rule becoming effective as of December 2016. For those in this majority group, there is not much to be done at this point. The DOL has not responded to the court's injunction and the case may be appealed to the Fifth Circuit Court of Appeals (or to the U.S. Supreme Court).

From a purely legal standpoint, the temporary block means that employers technically do not need to immediately comply with the DOL's new overtime rule. However, it's important to note that employers must follow both federal and state laws governing overtime and exempt status. Therefore, this delay in the federal rule does not impact any state laws that increase minimum salary/wage levels for overtime purposes in 2017 (e.g., New York and California). Even for employers who do not operate in states with an impending state-level increase in the overtime threshold, it still may be worthwhile to stay the course. Unwinding any changes that have already been announced to employees would be unwelcome news and could have a negative impact on employee morale.

We will post updates as further developments arise.

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