

Federal Court Upholds DOL's Authority to Set Minimum-Salary Test for White-Collar Exemption

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The U.S. Department of Labor (DOL) has statutory authority to impose a salary requirement to qualify for an exemption from overtime under the executive, administrative, and professional exemptions under the Fair Labor Standards Act (FLSA), a federal district court in Texas holds, granting summary judgment to the DOL. *Mayfield v. U.S. Department of Labor*, No. 1:22-cv-792 (W.D. Tex. Sept. 20, 2023).

A lawsuit filed by a fast-food franchise operator asserted DOL lacked statutory authority to issue a 2019 rule increasing the salary level required for the exemptions to apply. The district court concluded, however, that under deference owed under *Chevron*, the DOL permissibly adopted a salary floor as a factor in defining the exemption. The court also rejected the business owner's argument that imposing a salary requirement implicated the "major questions doctrine," which has been used recently by the U.S. Supreme Court to invalidate federal regulations.

The court's decision affirming the DOL's authority to issue the 2019 final rule comes as the agency is engaged in rulemaking to raise the salary threshold even higher.

White-Collar Exemption

Employees who work in a "bona fide executive, administrative, or professional capacity" are exempt from the FLSA's minimum wage and overtime requirements. The FLSA does not clearly define these terms. Instead, Congress directed the DOL to "defin[e] and delimit[]" the scope of the "EAP," or "white collar," exemption and to modify the criteria "from time to time by regulations." U.S.C. § 213(a)(1).

The regulations set forth three requirements for the EAP exemptions: (1) The employee must primarily perform executive, administrative, or professional duties (the "duties" test); (2) the employee must be paid on a salary basis (the "salary basis" test); and (3) the employee's salary must exceed a minimum amount (the "salary level" test).

The salary level test, set forth at 29 CFR § 541.600, has been in place since the original 1938 regulation was issued.

Challenging the Salary Level Test

The DOL has adjusted the salary level test several times in recent years. In 2016, it issued a rule more than doubling the salary floor to \$47,476 annually (from \$23,660, the salary threshold in place since 2004). But a federal court in Texas promptly enjoined the final rule from taking effect and later invalidated the rule change in a subsequent decision in *State of Nevada v. U.S. Department of Labor*. The court concluded that with the sharp increase to the salary threshold, the salary level test essentially supplanted the "duties" test (and excluded from the exemption a large number of employees who satisfied the duties test), a change that exceeded the agency's statutory authority. "It is clear Congress defined the EAP exemption with regard to duties," wrote the court. "With this

said, the Department does not have the authority to use a salary-level test that will effectively eliminate the duties test.” The court explained that the DOL *could* raise the salary threshold, but not so high that it rendered the duties test irrelevant.

The DOL abandoned the invalidated Obama-era regulation during the Trump Administration and issued a replacement rule setting the salary floor at the current level of \$35,568 per year. This 2019 final rule is the subject of the latest challenge.

In *Mayfield*, rather than argue that the salary level increase undermined the primacy of the duties test in defining the white-collar exemption, the plaintiffs questioned the agency’s authority to give *any* consideration to salary as a factor. They argued that Congress, in enacting the FLSA, authorized the DOL only to define the duties that would satisfy the exemption.

The plaintiffs also invoked the major questions doctrine, a legal theory reinvigorated by the U.S. Supreme Court in *West Virginia v. Environmental Protection Agency*, a 2022 decision. Under the major questions doctrine (as explained by Justice Neil Gorsuch in his concurrence), “administrative agencies must be able to point to ‘clear congressional authorization’ when they claim the power to make decisions of vast ‘economic and political significance.’” The *Mayfield* complaint was filed within weeks of the justices’ forceful rebuke against agency overreach. It asserts that if Congress *did* authorize the DOL to impose a salary level test, it was an unconstitutional delegation of authority and ran afoul of the doctrine.

District Court Affirms DOL’s Authority

On September 20, 2023, the U.S. District Court for the Western District of Texas upheld the DOL’s authority to adopt a salary requirement. The court rejected the plaintiffs’ challenge under the Administrative Procedure Act (APA). It also held the major questions doctrine did not foreclose the DOL rule, and that granting the DOL authority to adopt a salary test was not an unconstitutional delegation of power by Congress.

The court held that the 2019 rule was entitled to “*Chevron*” deference under the APA. The FLSA does not unambiguously permit *or* prohibit the use of additional factors (like salary) to identify the employees that Congress intended to exempt, the court found. It rejected the plaintiffs’ argument that the term “capacity” in the FLSA meant that Congress intended the sole defining factor of exempt status to be the function that the employee performs — not their pay — or that the salary requirement was implicitly foreclosed by the structure of the text. In addition, because the DOL’s conclusion that the FLSA authorized a salary level test was a permissible interpretation of the statute, the DOL rule was not arbitrary or capricious and was not “manifestly contrary” to the FLSA.

The court also found that the salary level test was not a major question because the matter to be regulated in this case was not of “vast economic and political significance.” The estimated long-term costs of the DOL’s 2019 final rule did not create the kind of stark economic impact that would restrict Congress from delegating the matter to a regulatory agency under the major questions doctrine, the court reasoned.

Yet, the court found that even if the major questions doctrine were triggered, Congress permissibly conferred legislative authority to the DOL to issue regulations defining the scope of the EAP exemption. It concluded that Congress provided an “intelligible principle” to guide the agency in defining the parameters of the exemption and set

sufficient boundaries of agency discretion when it directed the DOL to exempt executive, administrative, or professional employees “from protections designed for vulnerable low-level workers.”

Therefore, the court granted the DOL’s motion for summary judgment and denied the plaintiffs’ motion for summary judgment.

What Happens Next

On September 7, the [DOL published a proposed rule](#) increasing the minimum salary test for the EAP exemption to \$55,068, another significant increase, and, depending on when implemented, may be higher, in excess of \$60,000. While the court’s decision in *Mayfield* provides DOL legal authority to impose a salary requirement, the significant increase proposed will be subject to the similar arguments that doomed the 2016 proposed rule, issues not addressed by the court in *Mayfield*.

Plaintiffs in *Mayfield* will likely appeal and potentially further challenge the new proposed rule.

Contact your Jackson Lewis attorney if you have any questions about the *Mayfield* decision or the DOL’s latest white-collar exemption proposed rule.

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