

Labor Department Rule Raising Salary Level for Exempt Employees Takes Effect (for Now)

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A federal judge in Texas has enjoined the Department of Labor (DOL) from enforcing its Final Rule raising the minimum salary level requirements for executive, administrative, and professional (EAP) exemptions to the minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA). *State of Texas v. U.S. Dep't of Labor*, No. 4:24-cv-499-SDJ (E.D. Tex. June 28, 2024). The injunction, however, only bars the DOL from enforcing the increase as to Texas government employees. The court did not grant the requested nationwide injunctive relief.

That means that, on July 1, the standard EAP salary threshold increases to \$844 per week (\$43,888 annually) for all other FLSA-covered employers, including private employers in Texas. The July 1 increase is the first phase in what could be an overall 65 percent increase to the standard minimum salary requirements. The simplified exemption test for highly compensated employees rises to \$132,964. (For details, see [DOL Releases Final White-Collar Exemption Rule, Sets Minimum Salary to Increase in Phases Beginning July 1, 2024.](#))

The court's decision was the first to find a federal rule unlawful since the U.S. Supreme Court's June 28, 2024, [opinion](#) in *Loper Bright Enters. v. Raimondo*, which overruled the "Chevron doctrine" of deference to federal agencies.

Injunction Prohibits DOL From Enforcing Overtime Rule Only to State of Texas Employees, But Ruling May Foreshadow Wider Injunction in Other Pending Cases

In the ruling, District Judge Sean Jordan granted injunctive relief to the State of Texas, the sole plaintiff in the underlying lawsuit challenging the Final Rule. In a strongly worded opinion, however, Judge Jordan held that the State plaintiff was likely to succeed on the merits of its claim that the DOL may not impose a salary minimum for application of the EAP exemptions.

Judge Jordan wrote:

An examination of the ordinary meaning of the EAP Exemption's undefined terms shows that the Exemption turns on an employee's functions and duties, requiring only that they fit one of the three listed, i.e., "executive," "administrative," or "professional capacity." The exemption does not turn on compensation.

...

A Department-invented test, untethered to the text of the FLSA, that systematically deprives employees of the EAP Exemption when they otherwise meet the FLSA's duties test, is necessarily unlawful.

More rulings will be forthcoming, in this and other pending suits. In each case, the plaintiffs argue that the DOL does not have statutory authority to raise the minimum

salary level for the exemptions to apply and that the FLSA defines the EAP exemptions based solely on the duties that an employee “customarily and regularly” performs.

Numerous Legal Challenges

The State of Texas filed its lawsuit on June 3. On May 22, a coalition of business groups had sued in the same district court (*Plano Chamber of Commerce v. U.S. Dep’t of Labor*). Those plaintiffs did not seek a preliminary injunction. (The court consolidated these cases on June 28.) Another lawsuit challenging the DOL final rule is pending in the federal court for the Northern District of Texas. That case, *Flint Avenue, LLC v. U.S. Dep’t of Labor*, was brought by a public interest law firm on behalf of a small business that alleges their exempt employees will lose the exemption when the new salary floor takes effect. The plaintiff filed a motion for a stay or nationwide preliminary injunction in that suit, but the DOL challenged the plaintiff’s standing, as only one employee was possibly affected by the July 1 minimum salary increase. The court held this was not enough to show irreparable harm sufficient to warrant injunctive relief. Although four other employees of the plaintiff would be impacted by the new January 1 salary threshold, the court said it would reach a decision on the merits before the January 1 increase comes to pass.

Meanwhile, litigation challenging the *current* salary threshold based on the same grounds Judge Jordan held the new salary level invalid (i.e., the exemptions are based on duties, not salary), is pending in the U.S. Court of Appeals for the Fifth Circuit. In *Mayfield v. U.S. Department of Labor*, a federal court in the Western District of Texas held the DOL does have statutory authority to impose a minimum salary requirement. (For more, see [Federal Court Upholds DOL’s Authority to Set Minimum-Salary Test for White-Collar Exemption.](#)) The plaintiff appealed that ruling. The Fifth Circuit has set an August 7 date to hear oral argument in that case.

Judge Jordan’s decision may foreshadow a similar result in these cases. It also recalls *State of Nevada v. U.S. Dep’t of Labor*, a 2016 court ruling in the same federal district. In that case, the court enjoined a rule issued during the Obama Administration which imposed a similarly drastic increase to the EAP salary floor. The court reasoned that rule sent the salary floor so high that it effectively vitiated the duties test. Quoting none other than Yogi Berra, Judge Jordan noted that the current case is “déjà vu all over again.”

“The application of a salary threshold for the EAP Exemption only comports with the Department’s authority under the FLSA, if at all, to the extent such threshold serves as a plausible proxy for the categories of employees otherwise exempted by the duties test,” the court held, explaining that a salary requirement would *only* withstand scrutiny if the employee *otherwise* satisfied the duties requirement.

What Employers Should Do Now

Judge Jordan said he expects to resolve the case on the merits “in a matter of months,” probably before phase two of the salary increase would take effect, on January 1, 2025. The scheduled January 1 hike is even more drastic, raising the threshold to \$1,128 per week (\$58,656 annually). The highly compensated employee floor would increase to \$151,164.

An intervening decision from the Fifth Circuit holding that the DOL cannot impose *any* minimum salary level could foreclose the minimum salary increases entirely, and perhaps

rescind the current salary floor. Of course, whether the DOL will appeal any adverse decision may turn on the outcome of the presidential election.

For now, with the exception of the State of Texas, employers must comply with the new minimum salary floor, raising the salaries of exempt employees who are paid below the new floor, reclassifying those employees as nonexempt, or limiting employee hours so they do not work overtime.

Contact your Jackson Lewis attorney if you have questions about compliance with the DOL's final rule and the rule's long-term prospects.

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