

Fifth Circuit Holds DOL Can Set Salary Floor for White-Collar Exemptions

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The U.S. Department of Labor (DOL) has statutory authority to impose a salary level requirement to qualify for the executive, administrative, and professional (EAP) exemptions under the Fair Labor Standards Act (FLSA), the U.S. Court of Appeals for the Fifth Circuit has held. [*Mayfield and R.U.M. Enterprises, Inc. v. U.S. Dep't of Labor*](#), No. 23-50724 (5th Cir. Sept. 11, 2024). The Fifth Circuit joins four other circuit courts of appeal to have found the DOL has authority to impose a minimum salary requirement for application of the exemption.

The Fifth Circuit's decision came in a legal challenge to a 2019 DOL rule. The case does *not* address whether the 2024 final rule further *increasing* the salary level in two stages is valid. The case directly addresses only whether the DOL has the authority to define the "white collar" exemptions in terms of a salary level requirement. Lawsuits seeking to overturn the Biden rule increasing the salary level are pending.

Mayfield Case

A fast-food franchise operator filed suit alleging DOL lacked statutory authority to issue a rule imposing a salary level requirement for the exemptions to apply. The plaintiff contended DOL does not have authority to adopt any salary floor as a factor in defining the exemptions because the statute defines the EAP exemptions only in terms of duties, not salary. The district court concluded under *Chevron* deference, however, that the DOL permissibly adopted a salary minimum. (See [Federal Court Upholds DOL's Authority to Set Minimum-Salary Test for White-Collar Exemption](#).)

On appeal, the Fifth Circuit affirmed the district court's decision and upheld the DOL action under the more rigorous approach required by the U.S. Supreme Court's June 28, 2024, decision in *Loper Bright Enterprises v. Raimondo* overruling *Chevron* (See [Go Fish! U.S. Supreme Court Overturns 'Chevron Deference' to Federal Agencies: What It Means for Employers.](#))

Statutory authority. Although the FLSA does not expressly require (or mention) any salary requirement, the appeals court held the 2019 minimum salary level rule "falls within the Department's explicitly delegated authority to define and delimit the terms of the Exemption." That authority includes the power to set a minimum salary level as a reasonable proxy for determining an employee's status as an executive, administrative, or professional employee, the appeals court said.

The appeals court stressed that the DOL's authority to impose additional factors for exempt status, like a salary level, "is not unbounded." Any factor imposed by the DOL must have "a rational relationship to the text and structure" of the FLSA and cannot differ "so broadly in scope" that it effectively replaces the original statutory requirements, the court said. The plaintiffs in an ongoing legal challenge in Texas have cited this language in support of their contention that the DOL's 2024 minimum salary

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rule exceeds its authority.

Constitutional challenges. The appeals court also concluded Congress did not violate the nondelegation doctrine in its grant of authority to the DOL. The appellate panel rejected the argument that the statute provides no “intelligible principle” to guide and confine the DOL in defining and delimiting the exemption. The text of the statute itself is sufficient guidance to the agency, according to the court.

The Fifth Circuit also held the minimum salary requirement did not violate the “major questions” doctrine because the doctrine does not apply. The minimum salary requirement does not have a sufficient economic impact to be a major question, it explained. Also, the issue of which employees are exempt under the FLSA is not the kind of “politically contentious” matter that would implicate the doctrine. Finally, the court said the minimum salary requirement is not a new claim of agency authority (a key element of the major questions analysis) because the DOL has continuously asserted the authority to adopt a minimum salary requirement in the 80 years since the FLSA’s enactment.

Legal Challenges to 2024 Rule

The 2024 final rule, which took effect July 1, increased the minimum salary for application of the EAP exemption to \$844 per week (\$43,888 annually). Another increase is slated for Jan. 1, 2025, raising the salary floor to \$1,128 per week (\$58,656 annually). (See [DOL Releases Final White-Collar Exemption Rule, Sets Minimum Salary to Increase in Phases Beginning July 1, 2024](#).) A decision by the Fifth Circuit that DOL did not have authority to impose a minimum salary requirement would have resolved current legal challenges to the 2024 rule.

While the Fifth Circuit’s decision did not foreclose the DOL’s right to impose a minimum salary requirement, it leaves open the question whether the DOL could set a floor so high that it effectively, and impermissibly, negates the duties test. As the appeals court explained, “If the proxy characteristic frequently yields different results than the characteristic Congress initially chose, then use of the proxy is not so much defining and delimiting the original statutory terms as replacing them.”

In an early decision narrowly enjoining the 2024 rule in *State of Texas v. U.S. Dep’t of Labor*, the key litigation pending in a Texas federal court, District Judge Sean Jordan wrote, “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.” His sharply worded decision granting a preliminary injunction signaled that the latest steep increases in the salary floor were not likely to meet this standard. (See [Labor Department Rule Raising Salary Level for Exempt Employees Takes Effect \(for Now\)](#).) Judge Jordan said he expects to resolve the case on the merits before the scheduled Jan. 1 increase would take effect. The district court’s ruling likely will head to the Fifth Circuit as well.

Two other lawsuits seek to invalidate the 2024 minimum salary rule:

- *Flint Avenue LLC v. U.S. Dep’t of Labor*. The federal court in the Northern District of Texas denied the plaintiff’s motion for a preliminary injunction, finding the plaintiff could not show it would suffer irreparable harm if the court did not bar the minimum

salary rule from taking effect. Cross-motions for summary judgment are pending.

- *Association of Christian Schools Int'l v. Department of Labor*. This case was filed in a Tennessee federal court. At the parties' joint request, the court this week transferred the case to the District of Columbia federal court.

Takeaway

The 2024 minimum salary rule remains in effect, at least for now. Employers must continue to comply with the new minimum salary floor and prepare for a Jan. 1 increase by raising the salaries of exempt employees who are paid below the new floor, reclassifying those employees as nonexempt, or limiting employee hours so employees do not work overtime.

For additional guidance, please contact a Jackson Lewis attorney.

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