

FLSA Salary Basis Rule on Hold

Description

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On November 15, 2024, the U.S. District Court for the Eastern District of Texas issued a nationwide injunction vacating the U.S. Department of Labor's (DOL) new rule (the "Rule") raising the minimum salary thresholds for the Fair Labor Standards Act's (FLSA) major exemptions to overtime and minimum wage laws. The court found that the DOL exceeded its statutory authority to make salary rather than an employee's duties determinative of whether a bona fide executive, administrative, or professional employee is exempt from the obligation to pay overtime.

The Rule, part of which went into effect on July 1, 2024, was scheduled to increase the salary minimum again to \$58,656 on January 1, 2025. By striking down the Rule in its entirety, the threshold reverts back to the 2019 rule's requirement of a \$35,568 minimum salary (\$107,432 for the highly compensated employee test). The court applied the new standard for review created in the June 2024 Supreme Court decision *Loper Bright Enterprises v. Raimond*, which requires federal courts to exercise independent judgment in deciding whether an agency acted within its statutory authority.

Texas is in the Fifth Circuit, so the court that would hear any appeal is the same court that just upheld the DOL's authority to set the salary relating to the 2019 rule in *Mayfield v. DOL*. Thus, if it wasn't for the upcoming administration change, the DOL would most certainly appeal the Texas decision and very likely the Texas court's opinion would be overturned. However, it is unclear whether the DOL will even appeal the decision due to the upcoming changes that will result from the new Presidential administration and, if the DOL does appeal, it is also uncertain whether the Fifth Circuit would hear the appeal prior to the administration change or whether the Fifth Circuit would stay the injunction during the appeal process, putting the Rule back into effect. Given the similarity of the situation to the 2016 rule challenge, there is a decent chance the Texas decision renders the Rule dead.

The challenges were of course anticipated and thus employers are still advised to follow the advice given in our [April 25, 2025 client alert](#). In particular, companies are advised:

- Not to raise the salary for an employee under the January 1st threshold if the employee's duties clearly fit within an exemption. For example, if an employee is a bona fide supervisor of two or more people and is paid less because they work less than full time or live in a state with a low cost of living, employers are advised to simply wait to see what happens.
- To strongly consider changing an employee's status to nonexempt if the employee's duties do not clearly fall into an exemption and their salary is below the January 1st threshold. This is particularly true if the employee lives in an area with a higher cost of living. Even if the salary basis is not officially raised, salary is often used as a guideline by the DOL and plaintiff's attorneys in choosing which jobs to challenge based on the duties part of the test. For example, if a Boston area employer has an employee working full time under the administrative exemption and only makes \$50,000, in many circumstances, that employee's duties may not be significant enough or involve enough discretion to be correctly classified (otherwise, the employee would be paid more). While there may be some exceptions to this, the lower salary will continue to be enough of a red flag that even with the anticipated lower rates of enforcement that will result from the new administration's focuses, the risk will often still warrant continued reliance on the employee being exempt. The new Rule's uncertain status provides a great opportunity to explain changing an employee's status from being salaried exempt to nonexempt.
- Be mindful of state law salary thresholds. While states like Rhode Island and Massachusetts currently have state thresholds well below the current FLSA Rule, states like California, New York State and

several New York counties, Colorado, and Washington state, amongst others, have new salary minimums taking effect on January 1st that are much higher than the FLSA Rule and are not affected by the status of the FLSA Rule. In addition, if the new Rule does not get reinstated, states may react by increasing state minimum salary requirements.

The [Employment & Labor Practice Group](#) at [Partridge Snow and Hahn LLP](#) is available to answer questions about the Rule. For more information or assistance, please connect with [Alicia Samolis](#), [Sean Fontes](#), [Morgan Hedly](#), or [Michael Gamboli](#).

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