

Insights

THE WAIT IS OVER: DOL INCREASE TO SALARY THRESHOLD THROWN OUT, NATIONWIDE

Nov 20, 2024

SUMMARY

After months of speculation, the District Court for the Eastern District of Texas issued an order invalidating the U.S. Department of Labor's ("DOL") rule increasing the minimum salary threshold that must be paid to certain employees to render them exempt from the overtime requirements of the Fair Labor Standards Act ("FLSA"). Specifically, the court found that the DOL exceeded its rulemaking authority by putting a "sharp increase" on salary minimums that "effectively displac[e]" the job duties tests for those exemptions. Many employers were awaiting this ruling as they considered whether to *sharply* increase certain exempt employees' salaries on January 1 to meet the new threshold or reclassify them as "non-exempt" and start paying overtime. For now, employers can go "pencils down" on that review.

BACKGROUND

Under the FLSA, most employees must be paid overtime (time-and-one-half their regular rate of pay) if they work more than 40 hours in a work week. But executive, administrative, and professional employees ("EAP") are exempt from the overtime requirement if they satisfy the "job duties test" for one of the EAP exemptions **and** they are paid a certain minimum amount on a salary basis (the "Salary Basis Test").

The DOL promulgates rules setting the minimum amount that must be paid to qualify for an EAP exemption (the "Salary Threshold"). That Salary Threshold has been increased only ten times in the past 85 years. Most recently, the DOL issued a final rule (the "2024 Rule"), increasing the minimum Salary Threshold as follows:

- July 1, 2024: The Salary Threshold increased from \$684 per week (or \$35,568 annually) to \$844 per week (or \$43,888 annually).

- January 1, 2025: The Salary Threshold was scheduled to increase to \$1,128 per week (or \$58,656 annually).

In other words, under the 2024 Rule, even EAP employees that satisfied the job duties test, and were compensated on a salary basis, would need to be paid at least \$58,656 per year—otherwise, they would need to be reclassified as non-exempt and paid overtime. From there, the 2024 Rule provided for additional **automatic** increases in the future (2027 and every three years thereafter) pegged to a percentile of average salary levels for salaried employees.

TEXAS COURT STRIKES DOWN THE 2024 RULE – NATIONWIDE

Almost immediately, the state of Texas and several private sectors employers filed suit challenging the 2024 Rule. On November 15, the Court invalidated the July 2024 Salary Threshold increase already in effect, and enjoined permanently the proposed upcoming January 2025 Salary Threshold increase **and** the July 2027 and triennial automatic Salary Threshold increases. Put simply, the court threw out the 2024 Rule **in its entirety**.

In doing so, the court disavowed the DOL’s approach to the new Salary Thresholds, concluding that using these salary levels effectively “replace[d] or swallow[ed]” the meaning of the terms executive, administrative, and professional employees. In essence, the court reasoned that the DOL had entirely defeated the point of the “job duties” test set forth by Congress in the FLSA. The court further criticized the DOL for trying to “evade the procedural requirements of the APA” by employing an automatic indexing mechanism for future increases to the Salary Threshold. Additionally, while not the focus of the opinion, the court also invalidated the Salary Threshold increase to the so-called “Highly Compensated Employee” exemption.

WHAT EMPLOYERS SHOULD DO NOW

Employers currently reviewing positions to determine whether exempt EAP employees would need to receive a substantial raise or be reclassified as non-exempt can pause that exercise. The Texas ruling has **nationwide effect**. Moreover, the incoming Trump Administration is unlikely to pursue an appeal of this ruling to the U.S. Court of Appeals for the Fifth Circuit. The 2024 Rule is, for all intents and purposes, a dead letter. The DOL’s 2019 Rule and the related Salary Threshold of \$684 per week (or \$35,568 annually) is back in effect. EAP employees paid at least that amount on a salary basis—who also satisfy the job duties test—can remain exempt.

Of course, the Salary Threshold is just one element of the exemption analysis. Employers would be wise to take this opportunity to review exempt positions holistically to ensure they are in full compliance with all applicable DOL standards—especially given that class- and collective-action claims under the FLSA are on the rise, and come with significant potential damages and penalties.

RELATED CAPABILITIES

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