

Locke Lord QuickStudy: Texas Federal Judge Strikes Down ?Minimum Salary Increases for ?White Collar and Highly ?Compensated Exemptions From Overtime, Again?

Locke Lord LLP

WRITTEN BY

Amanda McCloskey

For the second time in less than ten years, a federal judge in Texas has vacated and set aside the Department of Labor's ("DOL") attempt to raise the minimum salary thresholds to the Fair Labor Standards Act's ("FLSA") overtime exemptions. In its summary judgement order of November 15, 2024, the Court held that the DOL exceeded its agency authority by designing a rule that effectively displaced the FLSA's duties test with a "predominate—if not exclusive—salary-level test." The Court's ruling not only struck down the upcoming increases set to take effect on January 1, 2025, but also vacated the first boost that became effective on July 1, 2024, as well as the automatic three-year adjustments thereafter. The Court vacated the DOL's rule nationwide and for all employers, just as was done in 2017 for the DOL rule proposed in 2016 with similar salary increases. See *In the State of Texas, et al. v. Department of Labor*, No. 4:2024-CV-00499, Doc. 76 (E.D. Tex. 2024) (Jordan, J.); see also *Nevada v. Department of Labor*, 275 F.Supp.3d 795 (E.D. Tex. 2017) (Mazzant, J.).

This decision, in which the Court utilized the new standard for agency review outlined by the Supreme Court of the United States in *Loper Bright Enterprises v. Raimondo*, emphasizes the recent and increasing scrutiny on the administrative state in the post-*Chevron* world.

Background

In April 2024, the DOL issued its final rule (the "2024 Rule"), which was set to increase the \$35,568 minimum annual salary threshold for both the executive, administrative, or professional ("EAP") and the \$107,432 minimum annual salary threshold for highly compensated employee ("HCE") exemptions to the FLSA's overtime requirements. The 2024 Rule attempted to raise the minimum salary requirements to the EAP and HCE exemptions in three, staged changes. The first increase became effective on July 1, 2024, with the second increase to become effective on January 1, 2025. Thereafter, the 2024 Rule would automatically update the minimum salary threshold every three years.

The Court's Decision

However, on November 15, 2024, the U.S. District Court for the Eastern District of Texas halted the 2024 Rule. The Court held that the new minimum salary for the white-collar overtime exemptions imposed by the 2024 Rule "effectively eliminates" consideration of whether an employee performs the requisite executive, administrative or

professional duties in favor of what amounts to a salary-only test. The Court wrote that nothing in the statute allows the DOL to make “salary rather than an employee’s duties determinative” of whether an employee should be exempt from overtime pay. In sum, because the FLSA exemptions require that an employee’s status turn on duties—not salary—and because the 2024 Rule’s increases were so high – EAP from \$35,568 to \$58,656 and HCE from \$107,432 to \$151,164 – they effectively made the minimum salary issue predominate over duties, the changes exceeded the DOL’s authority to define and delimit the relevant terms. The Court also found that the express language of the FLSA requires regulations concerning the salary threshold be made in accordance with the Administrative Procedure Act, and that the three-year, automatic updates ran afoul of the notice-and-comment procedure set forth therein.

So, Now What?

The July 1, 2024 minimum salary increase for the white collar exemptions is nullified, and the January 1, 2025 increase will not go into effect as planned. However, there are several related considerations for employers to keep in mind going forward.

- *Considerations for employers who have already made, or announced, changes consistent with the 2024 Rule.* Many employers have already adjusted for the July 1, 2024 changes, and some may have already announced changes to its workforce in anticipation of the January 1, 2025 changes. Employers who have done so may be wishing to reverse course now. Although an employer may have the legal right to do so, there are several items to consider before doing so. Besides the practical implications that doing so may have on employee morale, some states have specific notice requirements for wage changes. Employers should consult counsel before making the decision to pause or revert to status quo.
- *Consider local and state laws, which may have salary thresholds that exceed the FLSA.* Employers must consider relevant state laws which may include requirements that go beyond what is required under the FLSA. For example, in California, in order to qualify as exempt under the state’s EAP exemption, employees must earn no less than two times the state’s minimum wage for full-time work—which is currently set at \$66,560 annually, as compared to the now-current federal threshold of \$35,568 annually.
- *Examine exempt employees’ duties and review payroll practices and procedures.* As this decision makes clear, meeting the duties test for these overtime exemptions is of critical importance. As part of regular reviews and updates to employment policies and agreements, employers should critically examine whether its exempt employees meet the applicable duties test, and update job descriptions or other duty-related documents to be accurate and consistent with those duties. Employers should also carefully review their payroll practices and procedures in general, such as policies on wage deductions for exempt employees, how to handle mistaken wage deductions, and training on proper timekeeping practices in general.

Although the DOL will have the opportunity to appeal this decision, many suspect that with the new presidential administration taking office in January 2025, the chances of the 2024 Rule ultimately going into effect seems unlikely. As the uncertainty surrounding this topic continues, Locke Lord’s Labor & Employment group will continue to keep employers up to date.

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