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Texas Court Strikes Down Federal Overtime Rule (Again)

Law and the Workplace on **November 16, 2024**

For the second time in seven years, a federal court in Texas has struck down a U.S. Department of Labor (DOL) rule aimed at expanding the scope of overtime eligibility to workers across the country. On November 15, 2024, in *State of Texas v. United States Dep't of Labor*, Judge Sean D. Jordan of the United States District Court for the Eastern District of Texas ruled that the DOL exceeded its rulemaking authority by raising the minimum salary for exemption as an executive, administrative, or professional (EAP) employee under the Fair Labor Standards Act.

Under the DOL's rule, which was published in April 2024, the minimum salary for exemption as an EAP employee, with limited exceptions, increased from $684 per week ($35,568 annualized) to $844 per week ($43,888 annualized) effective July 1, 2024. A second increase would have raised the salary threshold to $1,128 per week ($58,656 annualized) effective January 1, 2025. The rule also increased the minimum total annual compensation level for exemption as a "highly compensated employee" (HCE)—one who customarily and regularly performs any one or more of the exempt duties or responsibilities of an EAP employee—from $107,432 to $132,964 effective July 1, 2024 and to $151,164 effective January 1, 2025. The rule also provided for automatic triennial increases in the minimum salary for exemption as an EAP employee and the minimum annual compensation level for exemption as an HCE, tied to current earnings data, beginning on July 1, 2027.

Judge Jordan's ruling vacates the entire rule, including the increases that took effect in July 2024.

Flashbacks to 2017

You may recall that in May 2016—during the last full year of the Obama administration—the DOL published a new overtime rule more than doubling the minimum salary for exemption as an EAP employee. That rule was slated to take effect on December 1, 2016 and included automatic triennial increases to begin in 2020. Less than two weeks before the rule was to take effect, Judge Amos L. Mazzant, III of the Eastern District of Texas enjoined that 2016 rule on a nationwide basis, and in August 2017, Judge Mazzant granted the plaintiffs' motion for summary judgment, declaring the rule invalid and ending the case at the district court.

A Bridge Too Far

The rationale for striking the rule down was the same then and now. Judge Jordan, like Judge Mazzant before him, found that job duties—not salary—are what makes someone an EAP employee, and that by elevating salary over duties to such a meaningful degree, the DOL exceeded its Congressionally-delegated authority to "define" and "delimit" the EAP exemptions. As Judge Jordan pointed out, the January 2025 increase would have represented a 65% increase from the salary level in effect before the effective date of the 2024 rule, the effects of which would have been "staggering." In the court's words, the 2024 rule was "designed on [its] face to effectively displace the FLSA's duties test with a predominate—if not exclusive—salary-level test," and the DOL did not have the authority to make such "sweeping changes."

As a judge sitting in the Fifth Circuit, Judge Jordan was mindful of the Court of Appeals' recent decision in *Mayfield v. United States Dep't of Labor* holding that the DOL's authority to "define" and "delimit" the terms of the EAP exemptions includes the power to set a minimum salary for exemption. (The plaintiff in *Mayfield* challenged the DOL's 2019 rule raising the minimum salary from $455 per week to $684 per week.) Even though it recognized the DOL's authority to consider salary level in defining the exemptions, the the Court of Appeals expressly noted that the authority was not unbounded:

"Using salary as a proxy for EAP status is a permissible choice because … the link between the job duties identified and salary is strong. That does not mean, however, that use of a proxy characteristic will always be a permissible exercise of the power to define and delimit. 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."

Judge Jordan seized on that language from *Mayfield* in distinguishing the 2019 and 2024 rules:

"As *Mayfield* makes clear, the [DOL] cannot use a proxy characteristic (salary) to measure eligibility for the EAP Exemption[s] when it will "frequently yield different results than the characteristic Congress initially chose," i.e., duties. The [DOL's] attempt to do so in the 2024 Rule demonstrates that its use of the salary proxy is not so much defining and delimiting the original statutory terms as replacing them."

Unlike Judge Mazzant in 2016, Judge Jordan had an extra arrow in his quiver this time around—the Supreme Court's July 2024 decision in *Loper Bright Enterprises v. Raimondo*, which overturned *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* and eliminated the deference courts were required to accord to an administrative agency's interpretation of a statute. Judge Jordan's opinion, and its reliance on *Loper Bright*, crystalizes the recent and increasing assault on the administrative state—a dismantling of executive agency power that has no signs of abating in the post-*Chevron* world.

What's Next

If this were a year ago, we'd see an immediate appeal from the DOL to the Fifth Circuit arguing that the 2024 rule is consistent with *Mayfield* and should be resuscitated. But with the change in administration coming in January, there's no way the DOL would continue to pursue an appeal after Inauguration Day. So it's safe to consider the 2024 rule gone for good.

What a second-term Trump DOL will or won't do on overtime remains to be seen. The 2019 rule raising the minimum salary for exemption from $455 to $684 was issued during President Trump's first term, so it's not out of the question that his administration would support some increase above $684.

What about employers that raised salaries to $844 per week this past summer to maintain the exempt status of some of their employees? They could roll those salaries back to where they were as a matter of law, but that could cause employee relations issues. More likely than not, a number of employers that can afford to do so will leave the increased salaries where they are and simply take the 2024 increases into consideration as they make future compensation decisions.

"It Just Doesn't Matter…"

Employers should bear in mind that certain states have minimum salaries for exemption that will continue to be materially higher than the minimum salary under federal law. In New York, for example, the minimum salary for exemption as an executive or administrative employee in New York City, Long Island, and Westchester County is currently $1,200 per week ($62,400 annualized), increasing to $1,237.50 per week ($64,350 annualized) on January 1, 2025. In California, exempt employees must earn no less than two times the State's minimum wage for full-time work—currently, $66,560 a year—to meet the state's EAP employee exemption test.

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