

HEADS, WAGE
AND HOUR &
COMPLIANCE
LITIGATION
PRACTICE GROUP

Jim Coleman
Washington DC -
Northern Virginia

Ellen Kearns
Boston, MA

EDITOR IN CHIEF

Robin Shea
Winston-Salem, NC

New salary level is coming for exempt white-collar employees, unless...

By Ellen Kearns
Boston Office

The new [salary level regulations](#) issued by the U.S. Department of Labor will take effect July 1. On that date, the salary threshold for white-collar exemptions from the overtime requirements of the Fair Labor Standards Act will increase to \$844 a week, or \$43,888 a year. Six months later, on January 1, the salary threshold will increase again to \$1,128 a week, or \$58,656 per year.

In addition, the annual salary level required to claim the “highly compensated employee” exemption will increase to \$132,964 on July 1, and to \$151,164 on January 1.

But the courts may intervene and stop one or both updates with an injunction. If so, the new regulations would suffer the same fate as regulations issued by the Obama Administration in 2016. A federal court in Texas [permanently enjoined](#) those regulations only days before they were to take effect.

There are three lawsuits pending in Texas that are challenging the new regulations. The one that is most likely to have an early ruling is [Texas v. U.S. Department of Labor](#), which was filed on June 3 in the U.S. District Court in Eastern Texas. This is the same court that ruled against the Obama regulations in 2016. The lawsuit alleges that the 2024 regulations have the same problems as the 2016 regulations. That is,

on July 1, 2024, the Final Rule will classify approximately one million employees who are “employed in a bona fide executive, administrative, or professional capacity” as non-exempt based on their salary, not their bona fide job duties.... [A]nd on January 1, 2025, the Final Rule will classify approximately three million more employees who are “employed in a bona fide executive, administrative, or professional capacity” as non-exempt based on their salary, not their bona fide job duties.

Texas asked the court to set aside the minimum salary levels in the 2024 regulations because, like the levels in the 2016 regulations, they “would exclude so many employees who perform exempt duties, [that they fail] to carry out Congress’s unambiguous intent.”



LEGAL BULLETIN

June 21, 2024



Legal Bulletin #1105

Both parties have filed briefs, and a hearing is scheduled for Monday, June 24. This gives the court six days to enjoin the regulations before they take effect. We will provide an update once the court issues its ruling.

Two other cases have been filed in Texas challenging the 2024 regulations. In [*Plano Chamber of Commerce v. U.S. Department of Labor*](#), also filed in the Eastern District of Texas, the plaintiffs argued that because the Eastern District entered a permanent injunction against the 2016 regulations, it still had jurisdiction to enforce it and should block the 2024 regulations.

The other case, [*Flint Avenue LLC v. U.S. Department of Labor*](#), was filed in the U.S. District Court in the Northern District of Texas. That suit alleges that the FLSA does not permit the DOL to consider a salary level test when drafting regulations to determine whether an employee is exempt from overtime. The plaintiff moved for a preliminary injunction on June 12, but to date no hearing has been set.

In addition to these lawsuits, Congress has passed Joint Resolutions in both the House and Senate seeking to eliminate the 2024 regulations. The Congressional Review Act allows Congress to eliminate an agency regulation if the resolution gets a majority vote in each house, and if the President signs it. However, the Congressional Review Act has a look-back provision under which Congress can eliminate regulations only if the regulations were finalized in the final 60 legislative days of a two-year session. The actual cut-off date cannot be calculated until the current session adjourns, but experts have estimated that any regulations finalized before May 22 are likely to be beyond Congress' reach. Moreover, it is a near certainty that President Biden would refuse to sign such a resolution.

Finally, there is a potential indirect threat to the 2024 regulations. In 2019, a lawsuit was filed against regulations issued by the Trump Administration, which set \$684/week as the required weekly salary for white-collar exemptions. [*Mayfield v. U.S. Department of Labor*](#) challenged the Trump regulations arguing, as does the plaintiff in the *Flint Avenue* case, that the DOL does not have the authority to set a salary threshold in its white-collar regulations. The plaintiff lost in the district court, but he has appealed to the U.S. Court of Appeals for the [*Fifth Circuit*](#). Oral argument is scheduled for August 5. The plaintiff argues that even if a court were to find that the DOL had the authority to adopt a salary level test, because the FLSA does not clearly define the limits of the DOL's power, any regulations incorporating such a test have "flimsy legal support."

Stay tuned for breaking news between now and July 1.

LEGAL BULLETIN

June 21, 2024



Legal Bulletin #1105

This is a publication of Constangy, Brooks, Smith & Prophete, LLP. The information contained in this newsletter is not intended to be, nor does it constitute, legal advice. The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience. No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers. This email could be considered advertising under applicable laws.

IRS Circular 230 Notice: Federal regulations apply to written communications (including emails) regarding federal tax matters between our firm and our clients. Pursuant to these federal regulations, we inform you that any U.S. federal tax advice in this communication (including any attachments) is not intended or written to be used, and cannot be used, by the addressee or any other person or entity for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code.



www.constangy.com
Toll free 866.843.9555

Constangy, Brooks, Smith & Prophete, LLP

Constangy, Brooks, Smith & Prophete offers a wider lens on workplace law. We have counseled employers exclusively since 1946. With offices in 21 states, we are one of the largest labor and employment law practices in the U.S., with a growing Cybersecurity & Data Privacy practice group to match. Constangy has been named as a top firm for women and minorities by organizations including Law360, the National Law Journal and **Vault.com**. Many of our more than 200 attorneys have been recognized by leading authorities such as Chambers USA®, The Best Lawyers in America® and Martindale-Hubbell. Find out more about us online at www.constangy.com.

Office Locations

Alabama, California, Colorado, District of Columbia, Florida, Georgia, Illinois, Indiana, Maryland, Massachusetts, Missouri, Minnesota, New Jersey, New York, North Carolina, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia and Washington.