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Court blocks new FLSA salary thresholds... but only for State of Texas employees

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There was good news and bad news on Friday from one of the lawsuits challenging the U.S. Department of Labor's [regulation increasing the salary threshold for the so-called white-collar exemptions to the overtime requirements of the Fair Labor Standards Act that applies to "executive, administrative, and professional" employees](#). The first step of the salary increase (from the current \$35,568 annually to \$43,888) is scheduled to take effect today.

The good news for employers is that the court in *Texas v. U.S. Department of Labor* [granted a temporary injunction](#), which blocks the rule from taking effect. But the bad news is that the court limited the injunction to the State of Texas, *as an employer*.

In other words, the injunction does not apply to private sector employers in Texas or to any employers in the other 49 states. According to the court, the State of Texas provided evidence only about the increased overtime costs that the State would incur if the regulation went into effect.

Interestingly, in 2016, a federal court in Texas [issued a nationwide injunction](#) against a similar regulation that increased the salary threshold for the white-collar exemption. As a result of that decision, many observers were expecting a nationwide injunction if an injunction were issued against the regulations scheduled to take effect today.

However, there is an additional challenge to the new regulations, and we are awaiting a decision in that case. (There is also a third challenge, but that case was consolidated Friday with the State of Texas case.) We will provide updates as soon as decisions are issued and will also look for additional filings attempting to capitalize on the substantive win of this decision and expand on its scope.

Here are the highlights of the decision issued by Judge Sean Jordan, a Trump appointee, on Friday night:

- Judge Jordan found it appropriate to temporarily enjoin all provisions of the 2024 Rule as they apply to the State of Texas because they are likely to be held unlawful. This included (1) the salary level change taking effect today; (2) the salary level change that will take effect January 1; and (3) the automatic



salary level changes that will apply every three years after January 1.

- The statutory language regarding the application of the white-collar exemptions simply uses the phrase “any employee employed in a *bona fide* executive, administrative, and professional capacity.” Judge Jordan noted that there is no mention of compensation in that language. He also noted that the term working in a certain “capacity” reflects what someone is doing, not how they are paid, and that the phrase “*bona fide*” also supports this interpretation. Accordingly, he concluded, any rule implementing this exemption must center on duties. (The U.S. Court of Appeals for the [Fifth Circuit](#) has already held that the DOL has the authority to include a salary component to the exemption, so Judge Jordan could not simply reject that outright – although there was language in the opinion that suggested he might have liked to do so.)
- Judge Jordan concluded that there is too much emphasis on salary if, as the DOL has stated, 1 million employees will become non-exempt as a result of the July 1 increase and 3 million more as a result of the January 1 increase (\$58,656 annually).
- The judge quoted heavily from the DOL’s 2019 Trump-era regulations, which “conceded” that the Obama DOL made errors in 2016 when it published regulations with a large salary increase for the white-collar regulations. The judge said, “While the Acting Secretary may have had a profound change of heart since [2019], the Court hasn’t.”
- Judge Jordan also supported his decision by looking to the term “any employee” within the phrase of the statutory text, not “some” or “most.”
- Judge Jordan noted that the U.S. Supreme Court has done away with Chevron deference. [In a 1984 case](#), the Supreme Court had ruled that the courts must generally defer to regulatory agency interpretations of the law, as long as the agency interpretation is reasonable. [The Supreme Court overruled that 1984 decision on Friday morning](#). Judge Jordan cited to the Supreme Court’s language that even in cases where Congress delegated authority to the agency to give meaning to terms, the role of the court is still to effectuate the will of Congress (rather than defer to the agency). In the FLSA, Congress did not define the terms “executive, administrative, and professional,” but rather delegated that authority to the DOL.
- “In sum,” Judge Jordan said, “since the EAP Exemption requires that exemption status turn on duties – not salary – and the 2024 Rule’s changes make salary predominate over duties for millions of employees, the changes exceed the authority delegated by Congress to define and delimit the relevant terms.”
- However, as already noted, because the only plaintiff was the State of Texas, and therefore the only evidence of potential injury related to the State of Texas as an employer, Judge Jordan limited the injunction to the State of Texas – *as an employer itself*. In other words, the injunction applies only to the state or its agencies.
- The DOL had asked the court to limit any injunctive relief to the salary increase taking effect today, contending that the court could consider more evidence before the January 1 increase would take effect. However, Judge Jordan rejected the DOL’s request and concluded that the January 1 increase and the future indexing were also ripe for review at this time.

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We will continue to monitor and will provide updates regarding any new developments.

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