

A close-up photograph of a hand holding a silver pen, poised over a calculator. The background is blurred, showing what appears to be a desk with some papers and a small white object.

## ISSUE ALERTS

### FEDERAL JUDGE ENJOINS DOL'S FLSA SALARY INCREASE – BUT ONLY FOR ONE EMPLOYER

July 1, 2024

By: Forrest T. Rhodes Jr.

In the words of baseball sage Yogi Berra, “It’s déjà vu all over again.” As many of you may recall, in 2016, the U.S. Department of Labor (“DOL”) amended the regulations governing the Fair Labor Standards Act (“FLSA”) exemptions for employees in bona fide executive, administrative, and professional positions (“EAP Exemption”). At that time, the minimum salary for these exemptions was \$455 per week (\$23,660 annually) and DOL sought to more than double it, to \$913 per week (\$47,476 annually). Lawsuits challenged DOL’s action, and just nine days before those changes were scheduled to take effect, a federal judge in Texas issued a nationwide temporary injunction blocking them. Within six months (and with a new administration in the White House), those regulatory changes were officially dead.

Fast-forward to 2024, and we seem to be watching history start to repeat itself. In March of this year, DOL announced a two-step change to the minimum salary for the EAP Exemption. On July 1, 2024, the minimum salary is scheduled to increase to \$844 per week (\$43,888 annually), with another increase to take effect on Jan. 1, 2025, up to \$1,128 per week (\$58,656 annually). Once again, lawsuits were filed in federal court in Texas, and once again, just days before the rule is scheduled to take effect, a federal judge sided with the employer challenging the rule.

Without going too far into the legal weeds, the court found that DOL’s actions would, in effect, “displace the FLSA’s duties test with a predominant, if not exclusive, salary-level test.” Because the statute (FLSA) sets forth duties-based requirements for exempt status, the court found that DOL did not have the authority to set aside the exemption requirements Congress devised. Finding it likely that the employer would eventually prevail on the merits, the court issued a preliminary injunction blocking the salary increase. **However**, the scope of this injunction is markedly different than in 2016.

In this case, the State of Texas had filed the lawsuit on its behalf as an employer. Finding that Texas would likely win its case, the judge issued a preliminary injunction. However, **because the evidence in that case only addressed the impact of DOL’s actions on Texas, the judge limited the injunction to prohibit DOL only from**

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**enforcing the rule against the State of Texas. Unlike in 2016, the injunction was not nationwide, and it does not apply to any employer other than the State of Texas.**

How does this affect other employers? Three or four scenarios could play out, and employers' risk tolerance will guide their next steps.

- The DOL could suspend enforcement of the new salary threshold across the board to allow this lawsuit (and another one, which has a much broader scope of parties) to play out.
- There could be a ruling in the other case that provides a similar remedy on a broader scale.
- The DOL could take the position that the first step of the increase goes into effect on July 1, as scheduled, or simply say nothing, leaving employers in limbo.

For employers anxiously awaiting a reprieve from the increase, Friday's ruling is a positive development, but not the sort of clear guidance for which they were hoping.

Until more clarity is provided by the courts or DOL, there is an element of risk to not taking action to comply with the new salary threshold. Employers with exempt employees who would be impacted by the July 1 increase and have questions on that front should discuss those issues with their wage and hour counsel.

## FOR MORE INFORMATION

If you have questions or want more information regarding the DOL's FLSA ruling, contact your legal counsel. If you do not have regular counsel for such matters, Foulston Siefkin LLP would welcome the opportunity to work with you to meet your specific needs. For more information, contact Forrest Rhodes, Jr. at 316.291.9555 or [frhodes@foulston.com](mailto:frhodes@foulston.com). For more information on the firm, please visit our website at [www.foulston.com](http://www.foulston.com).

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