

CLIENT ALERTS

Limited Victory – District Court Stays the Implementation of the July 1, 2024 FLSA Salary Threshold for the State of Texas as an Employer Only

Client Alert

7.1.2024

Late Friday, June 28, 2024, the Federal District Court for the Eastern District of Texas issued a preliminary injunction enjoining the Department of Labor's (DOL's) Final Rule in *State of Texas v United States Department of Labor*, Case 4:24-CV-499-SDJ (E.D. Texas 2024). This injunction, however, was only limited to the named plaintiff, that of the State of Texas, an employer. For all others, the DOL's Final Rule will go into effect today, Monday, July 1, 2024.

The DOL projected that the salary threshold will impact approximately 1 million employees in the first step of the increase and more than 3 million in the second step of the increase on January 1, 2025. The January 2025 increase is more than a 50 percent increase from the 2023 threshold.

This is not the first time that a district court in Texas halted the DOL's attempt to increase the salary threshold for the overtime exemption under the Fair Labor Standards Act (FLSA). Indeed, the DOL's 2016 Final Rule which attempted to increase the overtime threshold to \$47,476 annually was enjoined by the U.S. District Court for the Eastern District of Texas on November 22, 2016, just days before the Final Rule was to take effect on December 1, 2016. Unlike yesterday's decision, the injunction issued in 2016 was issued on a nationwide basis.

What Employers Should Do

How an employer responds is mainly dependent on whether the current exempt employees already meet the salary thresholds. Employers of those workers must determine whether they will increase base salaries in line with the new thresholds or reclassify workers as non-exempt and pay them for any overtime hours worked at the rate of time and one-half (1.5x) their regular hourly rate. However, employers should consult with

Related People

Rebecca S. Davies
Shareholder

Brett J. Miller
Shareholder

Related Services

Labor and Employment

CLIENT ALERTS

legal counsel given the complexities involved in reclassification particularly where some employees earn wages above the exempt salary threshold while others in the same job classification are below the threshold.

The DOL's new salary threshold increase has two steps:

Exempt Salary Threshold

Highly Compensated Employee Salary Threshold

Current

\$684 per week

(\$35,568 annual salary)

\$107,432 per year, including at least \$684 per week paid on a salary or fee basis

After 7/1/24

\$844 per week

(\$43,888 annual salary)

\$132,964 per year, including at least \$844 per week paid on a salary or fee basis

After 1/1/25

\$1,128 per week

(\$58,656 annual salary)

\$151,164 per year, including at least \$1,128 per week paid on a salary or fee

Similar to the enjoined 2016 final rule, employers will be allowed to use up to 10% percent of nondiscretionary bonuses and incentive payments (including commissions) to satisfy the salary level. Also, similar to the DOL's enjoined 2016 final rule, there will be an automatic adjustment to the salary threshold every three years.

The new rule does not modify the duties test for either the white-collar or highly compensated employee exemption, which also must be satisfied for an employee to properly be classified as exempt from federal overtime pay requirements.

CLIENT ALERTS

Not the End of the Story

The *State of Texas* case was not the only legal challenge of the DOL's salary threshold increase. Although the district court in the *State of Texas* case consolidated the other case pending in the Eastern District of Texas, another case remains pending in the Northern District of Texas. Given this, there still exists the opportunity for another court to consider and issue a nationwide injunction. However, any such relief would not take effect prior to the July 1, 2024 effective date.

Please feel free to contact the authors of this Client Alert or your Butzel attorney for more information.

Rebecca Davies

313.225.7028

davies@butzel.com

Brett Miller

313.225.5316

millerbr@butzel.com