

Alert | Labor & Employment



December 2024

Texas Court Strikes Down DOL Salary Threshold Increase; DOL Appeals

Go-To Guide

- A Texas court nullified the Department of Labor (DOL)'s 2024 rule increasing salary thresholds for overtime exemptions.
- The court's decision reverts the salary threshold for exempt executive, administrative and professional employees to \$684 per week (\$35,568 annually) and for highly compensated employees to \$107,432 annually.
- The DOL filed an appeal, but it is unlikely to be resolved before the new administration takes office in January 2025.
- Employers should consider the financial impact of maintaining exempt status versus paying overtime and the effect of these changes on workplace morale.

On Nov. 26, 2024, the DOL filed a notice of appeal following the Eastern District Court of Texas' decision to vacate the department's final rule *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees (2024 Rule)* that had significantly increased minimum salary thresholds for overtime exemptions. The appeal responds to Judge Sean Jordan's Nov. 15, 2024, Memorandum Opinion and Order in *State of Texas, et al. v. DOL, et al.*, Case No.

24-0049 (E.D. Tex.), which expressly stated: “The 2024 Rule is hereby SET ASIDE and VACATED” (EDTX Ruling).

The EDTX Ruling nullifies both the July 2024 salary level increase and the scheduled Jan. 1, 2025, increase under the 2024 Rule. This development may create compliance challenges for employers nationwide and marks the third time in less than 10 years that courts have challenged DOL attempts to increase the salary threshold for executive, administrative, professional (EAP) and highly compensated employee (HCE) exemptions under the Fair Labor Standard Act (FLSA). To understand the nationwide impact of the EDTX Ruling and determine next steps, a brief review of the applicable law and the DOL’s previous attempts to increase the salary threshold may be instructive.

FLSA EAP Exemption Requirements

For an employee to qualify for an EAP exemption, in addition to the minimum salary thresholds discussed herein, the FLSA requires that an employee be paid on a “salary basis,” meaning there is an expectation that the employee earns a predetermined amount, regardless of whether the employee works more or fewer hours or days. In addition, the FLSA requires that an employee perform certain job duties clearly demonstrating that the employee should be exempt from overtime.

The 2024 Rule and the EDTX Ruling have not changed the FLSA’s “salary basis” or “job duties” requirements. Accordingly, previous federal exemption rules remain in effect as follows:

EXEMPTION	PRIMARY DUTIES	PREVIOUS MINIMUM SALARY	JULY 1, 2024 MINIMUM SALARY	JAN. 1, 2025 MINIMUM SALARY	CURRENT MINIMUM SALARY BASED ON EDTX RULING
Executive	Primary duty is management of the enterprise, department, or subdivision; directs the work of two or more other employees; and has the authority to hire or fire or make recommendations.	\$684/week or \$35,568/year	\$844/week or \$43,888/year VACATED	\$1,128/week; \$58,656/year VACATED	\$684/week or \$35,568/year
Administrative	Primary duty is office or non-manual work directly related to the management or general business operations; and	\$684/week or \$35,568/year	\$844/week or \$43,888/year VACATED	\$1,128/week; \$58,656/year VACATED	\$684/week or \$35,568/year

EXEMPTION	PRIMARY DUTIES	PREVIOUS MINIMUM SALARY	JULY 1, 2024 MINIMUM SALARY	JAN. 1, 2025 MINIMUM SALARY	CURRENT MINIMUM SALARY BASED ON EDTX RULING
	exercises discretion and independent judgment on matters of significance.				
Professional	Requires advanced knowledge, science, or learning customarily acquired by a prolonged instruction; or requires invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.	\$684/week or \$35,568/year	\$844/week or \$43,888/year VACATED	\$1,128/week; \$58,656/year VACATED	\$684/week or \$35,568/year
Highly Compensated	Regularly performs at least one of the exempt duties above.	\$107,432/year	\$132,964/year VACATED	\$151,164/year VACATED	\$107,432/year

Notwithstanding the changes in federal law discussed herein, employers should also consider state and local requirements in jurisdictions where employees are located (such as California, Colorado, New York, and Washington, which enforce higher salary thresholds and narrower duties requirements), as neither the 2024 Rule nor the EDTX Ruling affect local requirements.

2016 Rule Improperly Displaced Duties Test

In 2016 during the Obama administration, the DOL implemented a new rule increasing the salary level from \$455 per week to \$913 per week (from \$23,660 to \$47,476 annually), and containing a mechanism to automatically update the salary level every three years (2016 Rule). The 2016 Rule was immediately challenged in federal district court in the Eastern District of Texas. In its analysis, the court noted that the 2016 Rule sought to raise the minimum salary level from the 20th percentile to the 40th percentile of weekly earnings of full-time, salaried workers in the south. The court explained that by raising the salary level so significantly, the DOL effectively made the analysis of whether an employee performs bona fide EAP duties irrelevant and displaced the FLSA’s duties-based test with a minimum salary inquiry. In

addition, the court found the auto-increase feature violated the Administrative Procedure Act by, among other things, circumventing notice-and-comment requirements. The court concluded that the DOL lacked power to make such changes and therefore found that the 2016 Rule—including the automatic-update mechanism—was invalid. *Nevada v. DOL* 275 F.Supp.3d 795, 806–07 (E.D. Tex. 2017) (Mazzant, J.) (*Nevada II*). Following the 2016 rulings, the DOL quickly appealed, but the subsequent Trump administration withdrew its appeal, opting to focus on creating a new rule.

2019 Rule Deemed a Permissible Exercise of Authority

In 2019 and during the first Trump administration, the DOL implemented a new rule raising the EAP salary level from \$455 per week to \$684 per week (from \$23,660 to \$35,568 annually), and the HCE salary level to \$107,432, roughly equivalent to the 20th percentile of weekly earnings of full-time, salaried workers in the south based on contemporary data (2019 Rule). Unlike the 2016 Rule, the 2019 Rule did not include a mechanism to automatically increase the minimum salary level in future years. The 2019 Rule was challenged as an unlawful exercise of administrative power in *Mayfield v. DOL*, 117 F.4th 611 (5th Cir. 2024), wherein the plaintiffs asserted that the FLSA does not authorize the DOL's use of *any* salary component in defining and delimiting the terms of the EAP Exemption. The Fifth Circuit rejected this argument, explaining that the DOL could permissibly use salary as a proxy for EAP status when there exists a strong link between the job duties identified and salary, but admonished that the use of an additional characteristic to determine exemption status, such as salary, may not be a permissible exercise of authority if it frequently yields different results than Congress intended.

2024 Rule Improperly Displaced Duties Test

The state of Texas and a coalition of trade associations and employers promptly challenged the 2024 Rule in the Eastern District of Texas (the same court that reviewed the 2016 Rule). Initially, Texas asserted that it would be irreparably harmed and moved for a preliminary injunction. The court agreed and enjoined the DOL from implementing and enforcing the 2024 Rule against Texas as an employer. *See Texas v. DOL*, No. 4:24-CV-499, 2024 WL 3240618 (E.D. Tex. June 28, 2024). Because the injunction was granted only as to the state of Texas, the 2024 Rule, including the salary level increase that took effect July 1, 2024, continued to apply to private employers in Texas and all employers nationwide.

Thereafter, the parties submitted motions for summary judgment and full briefing on the issues. In its recent analysis, the EDTX noted that the 2024 Rule raised the salary threshold even though there had not been a corresponding change to the federal minimum wage, and therefore, the increase in July 2024, coupled with the scheduled increase on Jan. 1, 2025, would have the effect of disqualifying employees earning less than the 35th percentile of weekly earnings of full-time, salaried workers in the south. Such an increase, the court calculated, would render approximately three million employees non-exempt, without regard to their job duties. As it did in 2016, following challenges to the Obama administration's effort to raise the EAP exemption threshold, the EDTX noted that the salary level increases required by the 2024 Rule would "screen out substantial percentages of employees who meet the duties test," and therefore improperly displaced the duties component of the EAP exemptions with a predominantly salary-driven analysis. In addition, the court found, as it did in 2016, that the 2024 Rule's automatic mechanism to increase the minimum salary every three years exceeded DOL authority, which should be exercised through the regulatory process.

In the court's Memorandum Opinion and Order, dated Nov. 15, 2024, Judge Jordan granted plaintiffs' motions for summary judgment and denied defendant's cross-motion for summary judgment, rejecting the 2024 Rule in its entirety, including not only the upcoming January 2025 increase and future

adjustments but also the increase that occurred in July 2024. As a result of the EDTX Ruling, the salary threshold for EAP employees returns to \$684/week (\$35,568/year), and the salary threshold for HCE employees returns to \$107,432 for all employees nationwide.

Moving Forward

On Nov. 26, 2024, the DOL appealed the EDTX Ruling. It is unlikely that the Fifth Circuit will rule on the matter before the transition to the new administration Jan. 20, 2025. Though President-elect Donald J. Trump's team has not commented on the ruling, upon its return, the Trump administration may not choose to maintain the appeal, similar to how the previous Trump administration abandoned the 2016 Rule appeal. Accordingly, employers must decide what to do, if anything, now that the Jan. 1, 2025, scheduled increase will not take place, and the July 1, 2024, increase has been vacated.

The DOL allows an employer to treat an employee as non-exempt who might otherwise qualify as exempt. However, the DOL does not allow an employer to treat an employee as exempt who fails to satisfy the minimum salary threshold, "salary basis" test, and "job duties" test. With that in mind, employers now have the option to treat an employee earning more than \$35,568/year but less than \$43,888/year as non-exempt, or exempt (assuming the employee meets the "salary basis" and "job duties" requirements of the FLSA), without violating the law. The fact that the July increase was invalidated, and that the threshold returned to \$35,568, does not mean that an employee in this salary range will automatically become exempt again and no longer be entitled to overtime. Changing employees' exemption status in light of the EDTX Ruling might implicate recordkeeping and applicable overtime requirements. Switching back and forth and taking away eligibility for overtime may also affect workplace morale in a negative way and should be considered on a case-by-case basis.

To determine the best option, employers should consider conducting a financial impact analysis to determine if it is more cost effective to record time and pay overtime to non-exempt employees or maintain the salary and exempt status of any employee whose salary was raised in July. For employees who are currently non-exempt; will remain non-exempt; and/or will become non-exempt, an employer must be prepared to track all hours worked, and communicate with its professional employer organization, where applicable, about proper coding and recording of time. Employers should also consider updating applicable policies and procedures regarding timekeeping and recording, as necessary, and communicate such procedures to all affected employees and supervisors.

Regardless of which option is chosen, employers should consider how workplace morale will be affected with multiple changes, even if they are permitted by current law, and should strive to treat all similarly situated employees in the same manner.

Authors

This GT Alert was prepared by:

- [Alicia Sienne Voltmer](#) | +1 214.665.3693 | Alicia.Voltmer@gtlaw.com
- [Natasha L. Wilson](#) | +1 678.553.2182 | Natasha.Wilson@gtlaw.com
- [Joshua Bernstein](#) [^] | +972 (O) 3.636.6023 | Josh.Bernstein@gtlaw.com
- [Pamela White](#) | +1 973.360.7900 | Pamela.White@gtlaw.com

[^] Attorneys in the Tel Aviv office do not practice Israeli law.

Albany. Amsterdam. Atlanta. Austin. Berlin⁷. Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Houston. Kingdom of Saudi Arabia⁸. Las Vegas. London⁹. Long Island. Los Angeles. Mexico City⁺. Miami. Milan[»]. Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Diego. San Francisco. São Paulo[›]. Seoul[∞]. Shanghai. Silicon Valley. Singapore^ˆ. Tallahassee. Tampa. Tel Aviv[^]. Tokyo[⊠]. United Arab Emirates[⟨]. Warsaw^ˉ. Washington, D.C. West Palm Beach. Westchester County.

This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ⁷Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ⁸Operates as a separate UK registered legal entity. ⁹Greenberg Traurig operates in the Kingdom of Saudi Arabia through Greenberg Traurig Khalid Al-Thebity Law Firm, a professional limited liability company, licensed to practice law by the Ministry of Justice. ⁺Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [»]Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [›]Greenberg Traurig's São Paulo office is operated by Greenberg Traurig Brazil Consultores em Direito Estrangeiro – Direito Estadunidense, incorporated in Brazil as a foreign legal consulting firm. Attorneys in the São Paulo office do not practice Brazilian law. [∞]Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^ˆGreenberg Traurig's Singapore office is operated by Greenberg Traurig Singapore LLP which is licensed as a foreign law practice in Singapore. [^]Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. [⊠]Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimubengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [⟨]Greenberg Traurig's United Arab Emirates office is operated by Greenberg Traurig Limited. ^ˉGreenberg Traurig's Warsaw office is operated by GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2024 Greenberg Traurig, LLP. All rights reserved.