

ISSUE ALERTS

FEDERAL COURT STRIKES DOWN DOL RULE INCREASING SALARY MINIMUMS UNDER THE FLSA

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On November 15, 2024, a federal judge in the Eastern District of Texas issued an order vacating and setting aside the regulatory amendments that the Department of Labor (“DOL”) issued earlier this year to the minimum salary levels for exempt status under the Executive, Administrative, and Professional (“EAP”) exemptions under the Fair Labor Standards Act (“FLSA”).

BACKGROUND

As you may recall, in March of this year, DOL announced a Final Rule that would increase the minimum salary for exempt status under the EAP exemptions. The increases were on a staggered schedule, with an initial increase to \$43,888 per year, which took effect on July 1, 2024, and a more significant second increase, to \$58,656 per year, which was to take effect on January 1, 2025. The Final Rule also implemented changes to the Highly Compensated Employee (“HCE”) exemption, with the HCE threshold moving to \$132,964 per year on July 1, and then to \$151,164 per year as of January 1, as well as added an automatic updating of these minimum thresholds every three years.

WHAT HAPPENED?

Shortly after DOL issued the Final Rule, several industry groups and other pro-business organizations, among others, sued to challenge it. Their arguments were largely two-fold. They argued that DOL didn’t have authority under the FLSA to include a salary component to the requirements for exempt status. Alternatively, even if a salary component was within DOL’s authority, the groups argued that the increases DOL implemented with the Final Rule went too far.

A federal appellate court ruling from September 2024 disposed of the first question, as the court of appeals found that a salary component was within the scope of DOL’s authority to “define and delimit” the HCE exemptions within the FLSA. However, on the alternative argument, the court agreed with the plaintiffs that DOL’s increases went

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beyond the agency's authority.

In the court's view, by implementing these significant salary increases, which DOL bragged would result in approximately four million exempt employees becoming non-exempt, DOL effectively replaced the job duties test with a *de facto* salary test. The court found that this was outside the statutory authority given to DOL by Congress to "define and delimit" the requirements for exempt status. In addition, the court found the agency's attempt to impose an automatic (every three years) salary index-based increase was inconsistent with the requirements for amending regulations, which required DOL to follow a specific process each time before an amendment could occur.

DOL is likely to appeal the court's decision, but the appeal process will take at least several months to get started and much longer before the case is fully briefed to the appellate court for a decision. In the meantime, President Donald Trump will take office in January and in so doing, he will take over control of the federal agencies that would be prosecuting that appeal. While we are not aware of any statements from Pres. Trump on this ruling, he will presumably not be interested in spending resources to fight for a rule that he doesn't support. If that's the case, the appeal will die on the proverbial vine and the district court's decision will remain in place.

WHERE DO WE STAND?

The result of the court's ruling is to essentially reset the salary requirements to where they were prior to the Final Rule. Thus, the minimum salary for the EAP exemptions goes back to \$35,568 per year. And for employers utilizing the HCE exemption, the minimum total compensation level returns to \$107,432. The duties tests associated with the EAP exemptions were not changed by the Final Rule, so those requirements remain in place.

WHAT NEXT?

For employers who were preparing for salary increases or positional reclassifications based on the January 1 increases, you can set aside those preparations. For employers who reclassified employees because of the initial salary increase on July 1, you can reevaluate those positions based on the now-lower minimum salary and decide whether you feel comfortable reclassifying those employees back to exempt status. In theory, employers who gave salary increases to maintain exempt status through the July 1 increase could reevaluate the continuing need for those increases, although the potential employee relations issues associated with a salary take-back may justify not following that path.

Is a future minimum salary increase likely? As many will recall, we went through a similar exercise in 2016, when the HCE salary increases proposed by the DOL under President Barack Obama were struck down on the eve of implementation. Then, during Pres. Trump's first term, the DOL went through the rulemaking process and in 2019 issued a Final Rule increasing minimum salaries to their current levels. A similar path would not be surprising over the next few years.

FOR MORE INFORMATION

If you have questions or want more information regarding employee classifications and the court activity surrounding 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 T. Rhodes, Jr. at 316.291.9555 or frhodes@foulston.com. For more information on the firm, please visit our website at www.foulston.com.

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