

BUSINESS GROUPS FILE SUIT TO BLOCK LABOR DEPARTMENT'S NEW OVERTIME RULE: YOUR TOP 3 QUESTIONS ANSWERED

Insights
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As the first compliance deadline rapidly approaches, employers should closely track a new lawsuit filed earlier this week that challenges the federal overtime rule. A coalition of business groups claims the Labor Department exceeded its authority by setting the salary threshold too high and requiring automatic increases every three years. Under the new rule, which is expected to impact 4 million workers, the salary threshold for the so-called “white-collar” exemptions is set to rise from \$35K to about \$44K on July 1 and jump to nearly \$59K at the start of 2025. Employees will need to earn at least this new threshold to even be considered exempt from OT pay under the white-collar exemptions. Although the rule is now in legal limbo thanks to the May 22 lawsuit, you can’t count on a court blocking it – so you should keep preparing for it to take effect as planned. Here’s what you need to know as the legal challenge unfolds.

1. How Did We Get Here?

Under the federal Fair Labor Standards Act (FLSA), employees generally must be paid an overtime premium of 1.5 times their regular rate of pay for all hours worked beyond 40 in a workweek — unless they fall under an exemption. To qualify for the white-collar exemptions – the executive, administrative, and professional exemptions – employees must meet three criteria:

- Be paid on a salary basis;

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- Be paid at least the designated minimum weekly salary; and
- Perform certain duties.

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Currently, the salary threshold for these exemptions is \$684 a week (\$35,568 annualized). The DOL's new rule raises the rate first on July 1 to \$844 a week (\$43,888 annualized), then on January 1, 2025, to \$1,128 (or \$58,656 a year).

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In addition to raising the salary threshold, the rule makes the following key changes:

- The salary threshold will be automatically updated every three years starting on July 1, 2027.
- The threshold for the "highly compensated employee" (HCE) exemption will rise, first to \$132,964 on July 1, then to \$151,164 on January 1, 2025 – which is also a bigger increase than initially proposed and is a significant increase from the current \$107,432. The HCE threshold will also be updated every three years.

The business groups that are challenging the rule say the Labor Department doesn't have the authority to make these changes.

2. Didn't This Happen Before?

Yes. This lawsuit did not come as a surprise, and it tracks a challenge to the Obama administration's 2016 rule, which also attempted to dramatically increase the salary threshold. In fact, the new lawsuit has been filed in the same federal district court in Texas.

In 2016, the court stopped the rule from taking effect just days before the hike was set to take effect – and it permanently blocked the rule in a 2017 order. In that case, the court said the new salary threshold was too high because it "essentially make[s] an employee's duties, functions, or tasks irrelevant if the employee's salary falls below the new minimum salary level." The court also prohibited the DOL from automatically increasing the salary threshold without following certain requirements under the Administrative Procedure Act, such as providing notice and allowing the public an opportunity to comment.

In the new lawsuit, the business groups claim the DOL has defied the court's prior order. They allege the agency issued

another minimum salary level that goes “far beyond” what the Department is authorized to adopt – and by incorporating automatic increases into the new rule.

“The Department’s 2024 Overtime Rule largely repeats the errors of the 2016 Rule and fails to address the flaws previously identified by this Court,” according to the May 22 complaint.

Notably, there is also some debate over whether the DOL has the authority to set a salary threshold at all.

Moreover, when looking at the bigger picture, you should note that two cases pending before the Supreme Court are broadly challenging the boundaries of federal agency power. Our [FP attorneys are predicting](#) that SCOTUS will replace the *Chevron* standard – which gives agencies an immense amount of deference – with a narrower test that will give courts wide latitude to put regulations under a microscope and second guess an agency’s wisdom. If these predictions come true, the business groups challenging the OT rule could have a much better chance of succeeding on their claims. We expect SCOTUS to issue decisions in these cases by the end of June, just before the July 1 effective date for the DOL’s first salary threshold increase. Stay tuned for updates, as these cases could change everything.

3. What Should We Do Now?

It’s important to remember the effective dates for compliance have not been changed or blocked ... at least not yet. Complying with the new salary level may require careful planning, budgeting, and communications with employees. So, you don’t want to wait and see what happens before you build a strategy to comply by July 1.

[You can click here for our comprehensive guide to the new overtime rule – and 10 steps you can take now to prepare.](#)

Conclusion

We will continue to monitor developments from the courts and the DOL’s Wage and Hour Division, so make sure you are subscribed to [Fisher Phillips’ Insight System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Wage and Hour Practice Group](#).

