

JUDGE ISSUES LAST-MINUTE ORDER HALTING OVERTIME RULE FOR TEXAS STATE WORKERS ONLY: WHAT EMPLOYERS NEED TO KNOW

Insights
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The State of Texas as an employer will not have to comply with Monday's new exempt salary threshold for the so-called "white-collar" exemptions because of a court order issued late on Friday. But the ruling is limited: Texas private employers and employers across the country will see the Overtime Rule go into effect as scheduled. The district court temporarily halted the rule only as it applies to the state of Texas as an employer while the court hears an underlying legal challenge. The judge agreed that Texas is likely to win its argument that the Department of Labor (DOL) exceeded its authority by raising the salary threshold too high and requiring automatic adjustments every three years, and therefore should not have to pay the higher wages to its own state employees in the meantime. While the judge could have issued a nationwide order, he limited it to Texas as an employer because the state was the only party challenging the rule in this particular lawsuit and offered evidence only of its own injuries as an employer. Although there are several additional lawsuits pending, all other employers will still need to comply as planned unless and until a court says otherwise. Here's what you need to know about the recent court order and the ultimate fate of the overtime rule.

What Happened?

A Win for Texas. While lawsuits are still ongoing challenging the rule, the temporary order issued on June 28 in *Texas v. DOL* applies only to workers employed by the state of Texas, specifically because Texas focused on how the rule would cause harm to the state as an employer.

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Given the limited scope of the order, we anticipate other lawsuits to be filed throughout the country seeking a broader injunction and a possible appeal to the 5th U.S. Circuit Court of Appeals in the *Texas* case. In the meantime, Phase I takes effect on July 1, raising the salary threshold for the white-collar exemptions from \$35K to about \$44K.

What did the district court say in the *Texas* case? Judge Sean Jordan of the U.S. District Court for the Eastern District of Texas said the state “will likely be unable to recover any of the costs that it should not have incurred in the first place. This includes both the increased wages it would be forced to pay to newly non-exempt employees, as well as the administrative costs of actually implementing the Rule statewide.”

Although several business groups are also challenging the rule in the same court, they did not ask the court to temporarily halt the rule while the lawsuit plays out.

History Repeats Itself. 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 was 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 makes 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 court essentially said the same thing. Since the white-collar exemptions turn on duties — not salary — and new rule makes salary predominate over duties for millions of employees, the changes exceed the DOL’s authority, according to Judge Jordan.

SCOTUS Landmark Ruling Applies. Notably, Judge Jordan cited Friday’s blockbuster decision from the U.S. Supreme Court overruling *Chevron* deference, which for decades required courts in some situations to “to defer to

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'permissible' agency interpretations of the statutes those agencies administer — even when a reviewing court reads the statute differently." SCOTUS tossed out that standard in favor of judicial interpretation, enabling courts to strike down agency rules much more easily and giving employers a powerful tool to fight back against regulatory overreach. [You can read more about that ruling here.](#)

What Does This Mean for Employers Other Than the State of Texas?

Employers will still have to comply with the new salary requirements until a court says otherwise. Here's a brief recap of the new rule:

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

Until July 1, the salary threshold for these exemptions was \$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).

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, if the rule isn't ultimately blocked.
- The threshold for the "highly compensated employee" (HCE) exemption increases first to \$132,964 on July 1, then to \$151,164 on January 1, 2025 – which is a significant increase from the current \$107,432. The HCE threshold is also scheduled to be updated every three years.

What Should Employers Do Now?

Track Legal Developments. The battle isn't over. Given the narrow geographic scope of the order, we anticipate a flurry of litigation challenging the Overtime Rule. Consequently, this may be a summer of uncertainty. And it's quite possible that a court could toss out the overtime rule before the January 1 effective date for Phase II. So, you'll want to track the legal challenges and prepare to implement the applicable changes to your compensation plans if needed. Pay close attention to the legal requirements of various state laws, especially states with robust wage and hour laws, like California, New York, and New Jersey.

Review Your Practices. You should also consider taking this time to:

- Carefully evaluate your options, costs, and budgets
- Perform a privileged review of your classifications with legal counsel
- Prepare to reclassify employees as needed (especially if their work does not satisfy the duties test)
- Review your HRIS, payroll, and timekeeping systems to ensure you can capture all time worked and properly calculate overtime
- Prepare communications for employees and their supervisors clearly explaining any changes and providing written notice if required by state law
- Conduct an annual compensation review (including a pay equity audit) to holistically evaluate pay practices
- [Read our comprehensive guide to the overtime rule and the steps you can take to prepare as we wait for a final answer.](#)

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](#).

