

OVERTIME SHOCKWAVES: FEDERAL APPEALS COURT TO DECIDE FATE OF SALARY BASIS TEST IN WAKE OF GROUNDBREAKING SCOTUS DECISION

Insights
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If one Texas employer has its way, we wouldn't be fighting over whether the Department of Labor has the right to raise the floor of the salary basis test for determining OT exempt status – we'd instead conclude that the federal agency never had the right to even set a salary floor in the first place. The 5th U.S. Circuit Court of Appeals heard arguments on August 7 from a Texas-based restaurant chain that Congress never authorized the DOL to do anything other than create the various job categories that would be exempt from overtime pay, seeking a ruling that would destroy the long-standing salary basis test altogether and send shockwaves across the country. The employer's latest weapon in this battle? The Supreme Court's recent groundbreaking ruling that rips power from federal regulators and hands it to federal courts. What do you need to know about this potentially momentous case?

What Are We Arguing About?

Let's start by taking a big step back. Congress passed a federal wage and hour law almost 90 years ago – the Fair Labor Standards Act (FLSA) – saying that employees 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. And the Department of Labor issued regulations to spell out which workers fall under the administrative, executive, and professional exemptions, collectively known as the "white-collar" exemptions.

But the DOL went one step further. The regulations also say that employees must be paid a certain minimum salary in

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order to be deemed exempt from OT pay under the white-collar exemptions. You are probably familiar with the fact that the federal agency recently raised this minimum level from about \$35K to \$44K on July 1 and will hike that floor up to \$59K at the start of 2025. And while a battle is ongoing about whether this increase is proper, that's not what this case is about – this case is about whether the agency had the authority to set any floor whatsoever.

Wage Battle Starts Brewing

- Robert Mayfield owns thirteen Dairy Queen franchises in and around Austin, Texas, operating under the name "R.U.M. Enterprises."
- After the DOL announced it would hike the salary basis floor from the \$35K level, R.U.M. filed a lawsuit in the U.S. District Court for the Eastern District of Texas challenging the very existence of the salary basis test. It argued that its store managers and assistant managers performed duties that would otherwise qualify them as executives under the FLSA OT exemption, but their pay wasn't enough to satisfy the new standard.
- In September 2023, a lower court rejected R.U.M.'s arguments, saying it had no choice but to defer to the Department of Labor's regulations. Under the 40-year-old *Chevron* standard, the judge said, "the Court must give the Department controlling weight" when interpreting ambiguous regulations.
- R.U.M. appealed that decision to the 5th Circuit, which heard oral arguments on the case on August 7.

Legal Landscape Changed in Midst of Court Battle

But the whole legal world changed between the time R.U.M. filed its appeal and the oral argument took place. Earlier this summer, in *Loper Bright Enterprises v. Raimondo*, the U.S. Supreme Court upended the legal world by overturning the *Chevron* doctrine, significantly reducing the power of federal regulators and placing more authority in the hands of judges.

Rather than being forced to defer to a federal agency's position when a statute is open to interpretation, the SCOTUS decision in *Loper Bright* means that courts are now free to provide an independent judicial interpretation in such



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situations. This will enable courts to strike down agency rules much more easily, giving employers a powerful tool to fight back against regulatory overreach. [You can read all about the decision here](#), and you can visit [the FP Post-Chevron Employers' Resource Center here](#).

You can bet this issue took center stage during Wednesday's oral arguments. Here are some of the highlights from the pre-argument briefing and the latest proceedings.

Employer's Arguments

- R.U.M. argued that *Loper Bright* is the “**death knell** of the Department’s claim to an ungoverned power to impose and raise minimum salary rules as high as it deems fit.”
- R.U.M. conceded that the DOL has long interpreted the FLSA to permit it to set salary level rules, but that consideration **no longer carries significant weight**. Instead, it argued, the DOL “is reaching beyond the boundaries of its delegated authority when promulgating minimum salary rules that are alien to the operative text.”
- It argued that the **DOL’s “expansive” view of its own authority** has no basis in the text or structure of the act, nor can it be squared with legal doctrines that call for Congress to create laws to answer major questions.

Department of Labor's Arguments

- The DOL first argued that Congress **expressly delegated** to it the authority to set a salary basis floor – so there’s no need to even look at the *Loper Bright* standard for interpreting ambiguous standards. It notes that the FLSA allows the DOL to “define and delimit” the OT exemption, and setting a salary floor to help do so “flows naturally from the very dictionary definitions” at issue.
- But even if the court found that there was no explicit grant of authority, the DOL argued, its interpretation should be **respected and “especially warranted”** because the regulation in question was issued at about the same time the law was passed (way back in 1938) and has remained consistent since then.
- The DOL also called for the 5th Circuit to defer to the principle of *stare decisis* – whereby courts should follow previous decisions to ensure consistency and

predictability in the law – given that **every court of appeals to have considered the question to date has agreed** that the DOL has statutory authority to use a salary level test.

What's Next?

It's anyone's guess as to when the 5th Circuit Court of Appeals will issue its decision, and how it will rule. We expect a decision late this year or early 2025, but also wouldn't be surprised if the appeals court issues a quick decision sending the case back down to the lower court and asking it to render a new decision given the change in the legal landscape.

Of course, all of this is playing out against the backdrop of the ongoing legal battle taking place in other courts over the impending January 1 implementation date for the raised salary basis floor. [You can read more here about the June 30 court decision that concluded the DOL did not have the authority to raise the floor but declined to issue a broad injunction blocking the rule from taking effect.](#)

What Should Employers Do?

First, make sure to track all of these legal developments. We anticipate a flurry of court activity in the coming months before the OT rule takes effect, so prepare for a period of uncertainty. Since it's quite possible that a court could toss out the overtime rule before the January 1 effective date, 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 in states with robust wage and hour laws, like California, New York, and New Jersey.

Most importantly, use this time to review your wage and hour 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](#).