

# OVERTIME RULE CLEARS MAJOR HURDLE IN ADVANCE OF JANUARY 1 EFFECTIVE DATE: KEY STEPS FOR EMPLOYERS

Insights  
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In a major win for the Department of Labor, a federal appeals court just ruled that the agency has the power to set a salary basis floor in order for workers to be considered exempt from overtime pay. Yesterday's ruling from the 5th Circuit Court of Appeals was by no means a slam dunk given the Supreme Court recently ripped a great deal of power from federal agencies and told federal judges they should exercise their own independent authority when ruling on these types of rules. But a three-judge panel from the conservative appeals court agreed with the agency and upheld the salary basis floor just months before a new rule takes effect on January 1 to raise the minimum salary level to about \$59K. What do you need to know about the ruling and what should you do in the coming months to prepare for the impending effective date?

## What Were 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 order to be deemed exempt from OT pay under the white-

## Related People



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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 an annual equivalent of \\$58,656](#) at the start of 2025.

[And while a battle is ongoing about whether this increase is proper](#), that's not what this case was about – this case was about whether the agency had the authority to set any floor whatsoever.

## Employer Buoyed by SCOTUS Ruling

An employer owning 13 Dairy Queen franchises in and around Austin, Texas, challenged the DOL's authority to set any salary floor at all. It argued that the DOL's "expansive" view of its own authority has no basis in the text or structure of the FLSA, nor can it be squared with legal doctrines that call for Congress to create laws to answer major questions. And while the employer lost the first ruling at the lower court in 2023, it gained renewed hope this past summer when the Supreme Court clawed back much of the power given to federal agencies like the DOL.

The decision in *Loper Bright Enterprises v. Raimondo* upended the legal world by overturning the long-standing *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 situations. [You can read all about the decision here](#), and you can visit [the FP Post-Chevron Employers' Resource Center here](#).

## Court Approves Agency's Authority

But the court used its independent power to agree with the agency's position and keep the salary basis test alive. It noted that Congress gave the DOL explicit authority to define and delimit the terms of the OT exemption, and therefore the agency was not acting outside of bounds by setting a salary floor. In fact, the court noted that the agency has "consistently issued minimum salary rules for over 80 years, and its authority to do so has not been questioned by Congress" – and since lawmakers weren't concerned about the DOL's actions, the courts shouldn't be either.

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## Agency Not Out of Woods Yet – National Injunction is Still Possible

This is a major victory for the DOL, but the pathway to the January 1 salary hike is still fraught with peril. As noted above, other court challenges attacking the salary bump are pending, and [at least one court has ruled that the DOL doesn't have the power](#) to raise the amount to the \$59K level set to take hold at the start of 2025. While that ruling only impacts Texas state employees, it's possible that same judge or others could decide to extend that ruling nationwide and halt the OT rule from taking effect for all employers across the country.

We expect the agency to trumpet yesterday's decision far and wide and use it as its main weapon when defending these cases – but litigation is notoriously unpredictable so it's hard to predict what will happen. We'll stay tuned to the ongoing litigation over the next few months and provide updates as warranted, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information.

### What Should You Do To Prepare for the Increase in the Salary Threshold?

While waiting for a final ruling and the effective date, you should also consider:

- Carefully evaluating your options, costs, and budgets
- Performing a privileged review of your classifications with legal counsel
- Preparing to reclassify employees as needed (especially if their work does not satisfy the duties test)
- Reviewing your HRIS, payroll, and timekeeping systems to ensure you can capture all time worked and properly calculate overtime
- Preparing communications for employees and their supervisors clearly explaining any changes and providing written notice if required by state law
- Conducting an annual compensation review (including a pay equity audit) to holistically evaluate pay practices

- [Reading our comprehensive guide to the overtime rule and the steps you can take to prepare as the effective date draws near](#)

## **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](#).