

# The Moving Goalposts of Overtime Exemption: Texas Judge Invalidates 2024 Salary Threshold Rule

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Just as many employers were finalizing their 2025 budgets, on November 15, 2024, a federal court in Texas issued a nationwide injunction six weeks before the second of two meaningful changes to the federal overtime law was set to take effect.

Unless specifically exempted, the Fair Labor Standards Act (FLSA) requires covered employees to be paid overtime when they work more than 40 hours during a week. One group of employees that is exempted from the overtime requirements are those who qualify as executive, administrative, or professional (EAP) employees. To qualify for this overtime exemption, workers must perform certain job duties *and* be paid on a salary basis. Until earlier this year, to qualify for the exemption, workers had to be paid a minimum yearly salary of \$35,568. In other words, those employees who earned in excess of this amount did not have to be paid overtime if they worked more than 40 hours in a week.

In April 2024, the U.S. Department of Labor (DOL) announced a final rule that qualified millions of additional employees for overtime pay because it increased the salary threshold required for the EAP exemption. The rule was to be implemented in phases. The first phase took effect on July 1 and called for an immediate increase to the minimum salary. Specifically, the first phase increased the salary threshold for the EAP exemption from \$35,568 (which is \$684/week) to \$43,888 per year (which is \$844/week). To comply with the new rule, employers across the nation had to increase the minimum salary paid to EAP employees by July 1, 2024, to avoid paying overtime to those workers.

The second phase of the new rule required the salary threshold to increase *again*, this time in a more meaningful way, on January 1, 2025, when the threshold was set to increase to \$58,656 (which is \$1,128/week). The new rule also required regular updates to the salary threshold every three years to ensure predictability, reflect changes in earnings, and to protect against the potential for future erosion of overtime protections.

The state of Texas and a coalition of trade associations challenged the rule, claiming that the DOL exceeded its authority when issuing the rule. Judge Sean D. Jordan of the Eastern District of Texas agreed and recently issued a nationwide injunction that not only invalidated the upcoming second phase that was set to take effect on January 1, 2025, but also invalidated the first phase of the rule, which took effect on July 1, 2024 and has already rendered an estimated one million workers as nonexempt who had previously been classified as exempt from the overtime requirements. The ruling also invalidates the regular updates every three years.

Practically speaking, where does this leave those employers that have already raised the salaries of exempt employees to meet the July 1, 2024 increase? Employers should exercise caution in taking any action with respect to existing salaries until we learn whether an appeal will be filed, and the ultimate resolution of any such appeal. Furthermore, many employers will be hard-pressed to lower a salary increase that may have been given to avoid qualifying certain EAP employees for overtime in accordance with the now-invalidated phase one increase.

Given the uncertainty of the effect of an appeal, employers are similarly left in limbo with respect to the January 1, 2025 increase. Employers that do not wish to raise salaries on January 1, 2025 in light of the recent decision should budget for the possibility of a successful appeal at some point in 2025, necessitating a later implementation of the contemplated raise to keep these employees exempt under the FLSA. However, given the upcoming presidential administration change, it is impossible to predict where the salary thresholds will ultimately land. The current salary thresholds were set pursuant to a 2019 rule issued by the first Trump administration, and it is unclear whether the

incoming Trump administration will support the now-voided thresholds rolled out during the Biden administration, the current thresholds originally set in 2019, or an entirely new set of salary thresholds. Regardless, employers should tread carefully in the coming months when evaluating the amounts that must be budgeted for salaries to ensure exempt employees remain exempt from the FLSA's overtime requirements.

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