Federal Judge Blocks $44k and $59k Overtime Rule Nationwide: The 6 Questions Employers Should Answer to Plan Immediate Next Steps

A Practical Guidance® Article by
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A rule that was set to dramatically boost the salary threshold for the so-called "white collar" overtime exemptions was just halted by a federal judge less than two months before the full effective date. The U.S. Department of Labor (DOL) exceeded its authority by raising the threshold too high (in two phases from $35K to $44k and then $59K) and allowing for automatic adjustments every three years, according to the court. The judge not only struck down the phase-two increase to $59K set to take effect on January 1 but also knocked down the first boost that took the salary floor to $44K in July and the automatic three-year adjustments – setting the threshold back to roughly $35K for now. While we expect the DOL to appeal the ruling, we don't think the incoming Trump administration will pick up the legal battle in January – which means employers have some critical decisions to make on how you want to move forward with your compensation plans. Here's what you need to know about today's ruling and six questions to consider now that the rule has been struck down.

How Did We Get Here?

OT Rule Would Have Applied to Millions of Workers. To backtrack a bit and provide context, the Biden DOL implemented a rule that extends overtime coverage to about 4 million additional workers by raising the salary threshold for the so-called «white-collar» exemptions. It rose to about $44K on July 1, and was set to jump to nearly $59K on January 1.

Judge Issued Limited Temporary Order. Back in June, a federal district court temporarily halted the rule only as it applied to the state of Texas as an employer while the court heard the underlying legal challenge. While the judge could have issued a nationwide order, he limited it 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.

Nationwide Relief Sought. Several business groups joined Texas and asked the court to vacate the rule completely for all employers. At a recent November 8 hearing, the judge heard arguments from those business groups in addition to the state of Texas as to why the rule should be blocked for all employers.

How Did the Court Rule?

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 then permanently blocked the rule a few months later. 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.

Same Arguments, Same Ruling. In the new lawsuit, the court essentially said the same thing as it did regarding the 2016 OT rule. Since the white-collar exemptions turn on duties — not salary — and the new rule makes salary predominate over duties for millions of employees, the changes exceed the DOL's authority, according to Judge Sean Jordan of the U.S. District Court for the Eastern District of Texas. The judge said that the rule impermissibly attempted to introduce "sweeping changes to the regulatory framework, designed on their face to effectively displace the FLSA's duties test with a predominate – if not exclusive – salary-level test." He concluded by saying the DOL "simply does not have the authority to effectively displace the duties test with such a predominant salary-level test."

But There's a New Twist. Notably, Judge Jordan cited the Supreme Court's blockbuster decision earlier this year overruling Chevron deference, which for decades required courts in some situations to "to defer to '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. By relying on this new SCOTUS standard, today's decision seems to stand on even firmer ground than previous attacks on the DOL's authority.

What Happens Next?

The DOL still has the opportunity to appeal the district court's ruling. But, of course, another plot twist is the pending change in administration as President-elect Donald Trump prepares for his return to the Oval Office. It's possible that an appeals court could step in and quickly reverse Judge Jordan's ruling before President Trump takes office, but what happens if the appeal is still ongoing as of January 20, 2025?

Looking to the past might offer a prediction on how Trump's DOL will treat this new rule. In 2017, the Trump administration effectively ensured that the Obama-era rule never saw the light of day. It then issued a new OT rule expanding overtime pay obligations but to far fewer workers than what the Obama rule would have done.

Now that the Texas federal court has blocked the new OT rule, and the second phase won't take effect on January 1 as scheduled, the Trump DOL will have time to take action and either scrap or dramatically scale back the new salary threshold.

6 Questions for Employers to Consider Now

Your strategy moving forward may depend on the steps you've already taken in anticipation of the OT rule coming online. You may have worked through your decision tree, reclassified some employees to non-exempt, raised salaries for others to meet the July 2024 threshold, and communicated your plan to comply with the major salary hike set for January 1. So, what can you do now? Here are six questions to consider:

1. **Did You Already Make Key Changes?** Can You Reduce Salary Back to the $35K range? You might find yourself in a difficult spot if you have already made alterations to your compensation plans or to your employees' exemption status, as it might be unpopular to reverse course now. Although you may have the legal right to revert to the status quo depending on your circumstances, rolling back the changes now could result in a blow to employee morale. Moreover, before making any major moves, you may want to see what happens with a potential appeal and how the new administration will respond. If you are changing course, you should note that some states require advance notice of wage changes, so you should check your local requirements. Regardless of the state law, however, you should clearly communicate changes before they take effect.
2. **Were You Waiting for the Deadline?** If you had been waiting until January 1 to implement the next round of changes, you are in luck. If you have said nothing about the potential increase, say nothing. If you have already forecasted the increase, you might consider communicating to your workforce that the expected changes are going to be delayed given the court›s ruling and let them know that you will continue to monitor the situation and make adjustments if and when appropriate. It is important to gauge your communications based on what you have already told your workforce. If there is an expectation that compensation levels would be increased during a certain time period, both for legal compliance and morale purposes, you will want to carefully craft your message.

3. **Are You Ready to Move Forward as Planned?** Of course, if you›ve already factored all the changes into your compensation plan for 2025, you›re free to proceed and raise compensation levels on January 1 (or whatever date you choose). After all, the salary threshold is a minimum level, and employers can always opt to pay exempt employees more. Additionally, non-exempt status is the default, so you have the option of maintaining non-exempt status for any newly reclassified employees. Just remember you›ll need to comply with the federal, state, and local wage and hour laws that now apply to those workers.
4. **Should You Consider a Hybrid Plan?** It›s hard to find a one-size-fits-all solution that applies to your entire workforce, so your plan might vary depending on the work unit or job type. Just remember to use objective criteria and to be consistent when applying changes so you don›t leave yourself vulnerable to discrimination claims.
5. **Should Companies Review Exemption Status?** This ruling will get a lot of press and may trigger closer examination of the exemption status by employees and the plaintiff›s bar. As a result, reviewing positions to see if the duties performed are exempt is a good idea.
6. **Should You Reach Out to Legal Counsel?** Particularly if you›re planning to pause or roll back changes that were already made or communicated, you may want to seek legal guidance to help you make compliant changes and develop effective communications for your workforce.

Conclusion

Fisher Phillips is here to help. We will continue to monitor developments from the courts and the DOL's Wage and Hour Division, so make sure you are subscribed to our 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.

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- Minimum Wage Requirements under the FLSA
- Minimum Wage State and Local Law Survey

Statutes & Regulations

- 89 Fed. Reg. 32842 (April 26, 2024)

Cases

- State Plano Chamber of Commerce v. United States DOL, No. 4:24-CV-499-SDJ, 2024 U.S. Dist. LEXIS 207864 (E.D. Tex. Nov. 15, 2024)

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Kathie Caminiti is a partner in the firm's New Jersey and New York offices, and a co-chair of both the Wage and Hour and Pay Equity practice groups. She has extensive experience handling all aspects of employment litigation, including individual plaintiff discrimination claims, restrictive covenant litigation and wage and hour class and collective actions.

Kathie has successfully defended cases alleging civil rights violations, race, sex, age and disability discrimination, sexual harassment, whistle-blowing, wrongful discharge and retaliation. She has also defended employers and financial institutions in Employee Retirement Income Security Act (ERISA) cases, including class actions, seeking severance, pension and health and welfare benefits.

Kathie has a sophisticated wage and hour practice and has distinguished herself in Fair Labor Standards Act (FLSA)/wage and hour litigation. As lead counsel, Kathie has obtained favorable outcomes for clients in various wage and hour matters, including class and collective actions arising under the FLSA and various state laws.

As a chair of Fisher Phillips' Pay Equity Practice Group, Kathie dedicates her time to analyzing the legal issues surrounding pay equality, conducting pay equity audits and defending equal pay litigation.

Kathie counsels her clients on compliance with the panoply of employment laws and assists with their liability prevention efforts by conducting employee training, preparing handbooks and implementing policies, as well as wage and hour and pay equity audits.

Given her significant experience, Kathie is frequently quoted by *ABC News*, *Bloomberg Law*, *Counselor Magazine*, *HR Executive*, *Law360*, *NJBiz*, *SHRM*, and other media outlets. She has published numerous articles that have appeared in *ACC Docket*, *HR Drive*, *New Jersey Business*, *New Jersey CPA*, *New Jersey Law Journal*, *New Jersey Lawyer Magazine*, *The New York Law Journal*, *PEO Insider*, and *Practical Law Institute* regarding a variety of employment-related issues.

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Hagood Tighe is a partner in the firm's Columbia office and co-chair of the Wage and Hour practice group. He is also an active member of the firm's class and collective action practice. In recent years, Hagood has handled approximately 40 class and collective actions throughout the country. Much of his class and collective experience is in the wage and hour area. He also has extensive experience with Worker Adjustment and Retraining Notification Act (WARN) class action litigation.

While he maintains an active litigation practice, he also focuses on providing practical and proactive advice designed to minimize the risk of litigation. Part of this effort includes working with national and local clients implementing arbitration programs. Hagood also provides training for supervisors and managers on harassment, Equal Employment Opportunity (EEO) compliance, the FMLA, and many other areas. Additionally, Hagood has authored numerous articles about employment law and regularly lectures at seminars regarding employment law.

Hagood has extensive experience in traditional labor working with employers throughout the United States. Hagood has successfully run many union-avoidance campaigns, tried labor arbitrations, and litigated unfair labor practices before the National Labor Relations Board (NLRB). He has also worked with several large national employers to develop strategic plans to maintain positive employee relations – thus reducing the likelihood of successful union organizing.

Hagood is past President of the South Carolina Bar and has held many other leadership positions both in the South Carolina Bar and in other civic and charitable organizations. He is a recipient of the Carolyn Holderman Vision Award by the Central Carolina Community Foundation for his leadership as chairman and was recognized by the Richland County Bar Association with its Civic Star Award. He was also a recipient of the Silver Compleat Lawyer Award from the University of South Carolina School of Law Alumni Association. This award recognizes alumni who have made significant contributions to the legal profession and who exemplify the highest standard of professional competence, ethics, and integrity.

Hagood is "AV" Peer Review Rated by Martindale-Hubbell and has been included in *South Carolina Super Lawyers*. He has been listed in *Chambers USA*, *America's Leading Business Lawyers* since 2007 and in *The Best Lawyers in America* since 2008. He was recognized as a "Labor Law – Management Lawyer of the Year" by *Best Lawyers* in 2017 and 2020 and as "Employment Law – Management Lawyer of the Year" in 2019.

Hagood has been selected by his peers to be one of *Greater Columbia Business* Monthly's Legal Elite every year since 2010. The same publication named him one of the "50 Most Influential People for 2011."

He is certified by the South Carolina Supreme Court as a Specialist in Employment and Labor Law.