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Biden EAP Overtime Exemption Rule Vacated, as Judge Sounds Death Knell for Increased Salary Thresholds

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On November 15, 2024, U.S. District Judge Sean D. Jordan of the Eastern District of Texas vacated the Biden Administration's overtime exemption rule. The final rule, which went into effect on July 1, 2024, included a biphasic approach to raising the executive, administrative, and professional ("EAP") OT exemption salary thresholds. The threshold moved to $844 per week, or $43,888 annually on July 1, and would have escalated to $1,128 per week, or $58,656 annually, on January 1, 2025. The rule also included automatic triennial updates to the threshold. But as President Trump readies to return to the White House, the salary threshold for EAP exemptions under the FLSA now reverts to $35,568, the level set during his first term. [1]

Judge Jordan's Memorandum Opinion and Order

Explaining a court's role in the context of *Loper Bright Enters. v. Raimondo,* Judge Jordan vacated the rule as an unlawful agency action exceeding departmental authority under the Administrative Procedure Act and remanded it to the U.S. Department of Labor ("DOL"). He provided an extensive treatment of the salary threshold's history, noting

> **the fundamental aspects of the salary-level test have included setting low minimum salary levels designed to exclude only obviously nonexempt employees, premised on wage-data for the lowest-wage region, the smallest-size business establishment group, the smallest-size city group, and the lowest-wage industry, applied by the Department in a manner consistent with serving only the purpose of separating exempt from nonexempt employees, not improving the status of such employees**

Texas v. DOL, 4:24-CV-499, 4:24-CV-468, slip op. at 14 (Nov. 15, 2024, E.D. Tex). He also explored the recent U.S. Court of Appeals for the Fifth Circuit decision in *Mayfield v. DOL*, which was issued in response to a legal challenge to the 2019 DOL Final Rule that increased the minimum salary requirement for the EAP exemption from overtime, and held that:

[u]sing salary as a proxy for EAP status is a permissible choice because, as we have explained, the link between the job duties identified and salary is strong. That does not mean, however, that use of a proxy characteristic will always be a permissible exercise of the power to define and delimit. If the proxy characteristic frequently yields different results than the characteristic Congress initially chose, then use of the proxy is not so much defining and delimiting the original statutory terms as replacing them.

117 F.4th 611, 619 (5th Cir. 2024). The Fifth Circuit's *Mayfield* opinion concerned the Trump era overtime rule, so it did not address the new Biden Administration thresholds. Judge Jordan's opinion took the next step, applying the Court of Appeals' rationale to invalidate President Biden's thresholds. His analysis considered three limitations on the DOL's congressionally-delegated authority to define and delimit the EAP exemptions:

- The terms capacity, executive, administrative, and professional all relate to an employee's functions or duties. The meaning of these terms "guides and limits [the Department's] power to 'define[] and delimit[]' them." *Mayfield*, 117 F.4th at 621. Thus, the Department "cannot enact rules that replace or swallow the meaning those terms have."
- The term "bona fide" allows the Department to use a minimum salary level but only if that salary serves as a reasonable proxy for an employee's exemption status.
- The Department must define and delimit the EAP Exemption through active rulemaking by passing regulations that comply with the APA.

Texas v. DOL, slip op. at 37-38. Judge Jordan repeatedly referenced the similarities between President Biden's EAP rule and the Obama Administration's overturned 2016 rule, suggesting that both regulations "contemplate[d] sweeping changes to the EAP Exemption's regulatory framework, designed on their face to effectively displace the FLSA's duties test with a predominate—if not exclusive—salary-level test." *Id.* at 38. The DOL's "changes make salary predominate over duties," a choice that "exceed[s] the Department's authority to define and delimit the relevant terms" under the FLSA. *Id.* at 39.

The rules also "attempt to dramatically increase the minimum salary level" and "to install a mechanism that automatically updates the minimum salary requirements to even higher levels every three years." *Id.* Judge Jordan found the mechanism "untethered to the operative terms of the EAP Exemption that concern an employee's job duties and functions, which Congress plainly intended to serve as the guiding principle for updating the EAP Exemption." *Id.* at 52. Such a provision, the Judge held, "also violates the notice-and-comment rulemaking requirements of the APA." *Id.* at 55. Evincing a particular dislike for this regulatory requirement, Judge Jordan pointedly opined that:

the Department endorses the Automatic Indexing Mechanism based on its conclusions that: (1) it hasn't done a bang-up job administering the EAP Exemption over the years; (2) its sporadic regulation has been driven by the difficulty of its task; so (3) the best way forward is to abdicate from more frequent and thorough rulemaking efforts by placing the regulation of the EAP Exemption on autopilot through the Automatic Indexing Mechanism. While this may be a satisfying solution for the Department, it is unlawful under the APA.

Id. at 57. The Judge pointed to DOL's own 2019 rulemaking for further support that such dramatic changes, like those in the 2016 rule, were "in tension with the [FLSA] and with the Department's longstanding policy of setting a salary level that does not 'disqualify[] any substantial number of' bona fide executive, administrative, and professional employees from exemption." 84 Fed. Reg. 51238; *see also Texas v. DOL* at 20.

In sum, Judge Jordan concluded that the Biden DOL's EAP salary thresholds did not serve as a reasonable proxy to inform overtime exemption status under the FLSA because the thresholds were set so high they became determinative, rather than serving their acceptable gatekeeping function.

Effects on Employers

Employers no longer face the January 1, 2025 salary threshold increase memorialized in the Biden Administration's vacated rule. But open questions remain regarding how to respond to Judge Jordan's ruling.

First, employers who complied with the July 1, 2024, threshold updates must determine whether to keep changes to pay and worker classification in place or return to the pre-July 1 status quo. These considerations go beyond legal compliance requirements and will impact employee relations, including employee morale. Whatever decisions companies make should be thoroughly evaluated and clearly communicated.

Second, employers who exhausted significant resources to prepare to comply with the January 1, 2025, threshold updates should evaluate whether to move forward with additional changes to pay and/or worker classification. While such changes are no longer required, some employers may determine they are nonetheless warranted, based on effort and time already expended.

Third, employers should keep an eye on this space for further developments as the second Trump Administration's priorities take shape. Presumably, there is room for movement between the 2020 EAP threshold and the now vacated 2024/2025 numbers. It is possible, President Trump's DOL could revisit overtime exemption rulemaking – he has expressed interest in other overtime-related changes, e.g., making overtime pay tax free – so we will continue to monitor and counsel on developments in this area.

Please connect with the authors or your friendly neighborhood Conn Maciel Carey attorney for further information about these and other labor & employment issues.

Footnotes:
[1] Judge Jordan acknowledges that

[I]ike the parties, the Court primarily discusses the 2024 Rule's changes to the standard salary level—not the [Highly Compensated Employee ("HCE")] level. However, the increases to the HCE salary level likewise change the exemption statuses of millions of employees. The Court's analysis regarding the legality of the changes to the standard salary level applies equally to the Department's changes to the HCE level.

As the Judge vacated the Biden DOL's rule, we can expect the HCE threshold to revert to its 2020 level – $107,432 – as well. *Texas v. DOL*, 4:24-CV-499, 4:24-CV-468, slip op. at 24 n.19 (Nov. 15, 2024, E.D. Tex).