

# District Court Holds Overtime Rule Invalid; Is End of Obama-Era Rule Here?

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The Department of Labor’s May 2016 Final Rule, which would have more than doubled the minimum salary necessary to satisfy the “executive, administrative or professional” (the “EAP” or “white collar”) overtime exemptions under the Fair Labor Standards Act, is invalid, the U.S. District Court for the Eastern District of Texas has held. *State of Nevada v. U.S. Dep’t of Labor*, No. 4:16-CV-731, 2017 U.S. Dist. LEXIS 140522 (E.D. Tex. Aug. 31, 2017). This cements the position the court took in granting a preliminary injunction against the DOL last November.

For details of the November ruling, see our article, [Texas Court Grants Nationwide Preliminary Injunction Enjoining Department of Labor from Implementing or Enforcing Regulation Raising Salary Level for White Collar Exemptions](#).

## DOL Possesses Authority to Implement Minimum Salary Level

The court clarified some confusion created by its prior ruling, explaining it had not held the DOL lacks authority to implement *any* minimum-salary requirement (an issue pending in the appeal of its preliminary injunction ruling). On the contrary, the court noted, Fifth Circuit precedent provides that such authority exists under the Congressional authority given to the DOL to “define and delimit” the exemptions “from time to time.” But, the court held, even though the DOL has the authority to impose a salary level, the salary level imposed by the Final Rule was invalid because it was too high and excluded too many individuals who otherwise would have satisfied the duties test. The statutory provision establishing the exemptions makes clear that the primary test of whether a position meets the exemption is its *duties*, not its salary, as the latter was designed merely “as a floor to screen out the obviously nonexempt employees, making an analysis of duties in such cases unnecessary,” the court explained.

## Rule Not Entitled to *Chevron* Deference

In setting a new minimum salary level that would have more than doubled the previous minimum requirement (from \$23,660 to \$47,476, a new minimum that the DOL itself estimated would render 4.2 million employees automatically eligible for overtime pay), the court held the Final Rule “fails to carry out Congress’s unambiguous intent” that the focus of the white collar exemptions is the duties performed in the position, not the pay. Thus, the Final Rule was not entitled to deference under the first step of the two-part standard established by the U.S. Supreme Court in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), to evaluate the validity of regulations. In addition, the court held that, by raising the minimum salary so high, the DOL “effectively eliminates a consideration of whether an employee performs ‘bona fide [EAP] duties,’” and so it likewise fails under the second step of the *Chevron* analysis.

## Other Issues

On two related issues, the court explained that its preliminary injunction “applied to both states and businesses on a nationwide basis.” This statement may have been an indirect response to a lawsuit filed in the District Court of New Jersey in June 2017. Those plaintiffs contend that the Texas injunction applied only to the DOL and not to private employers. The court put that argument to rest.

Finally, the court clarified that by invalidating the minimum salary aspect of the Final Rule, it likewise was holding unlawful the Rule’s provision requiring an automatic update of the minimum salary level every three years.

## What to Expect



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The court's summary judgment ruling likely sounds the death knell for the Obama-era overtime rule. Although the previous administration had appealed the preliminary injunction to the Fifth Circuit, it had done so to argue only that the DOL in fact has the authority to establish a minimum salary level, as it was unclear from the district court's ruling whether that had been the basis of the ruling. As the district court now has clarified DOL has that authority, that appeal likely will be dismissed as moot. In addition, earlier on the same day the summary judgment order was issued, the parties had jointly moved the Fifth Circuit to place the appeal on hold while they "engaged in ongoing discussions on how to narrow the scope of their dispute and potentially eliminate the need for this interlocutory appeal." That motion likewise probably becomes moot as well (although it signals that the DOL and the plaintiffs perhaps had struck a deal, most likely very similar to the ruling they received).

One avenue for those seeking to uphold the Final Rule is through a motion to intervene that was filed by the AFL-CIO in December 2016, shortly after entry of the preliminary injunction order. However, concurrently with its summary judgment order, the district court denied the motion to intervene, finding that it was untimely and that the DOL adequately represented whatever interests the union might have. The AFL-CIO could appeal that ruling.

Where does that leave the white collar exemptions? Back where they were prior to May 2016 — and since 2004 — at least until the Trump Administration promulgates a new rule with a revised minimum salary level, something Secretary of Labor Alexander Acosta has intimated will happen. It would appear unlikely that either party (the State and Business Plaintiffs or the DOL) will appeal this ruling.

We will continue to follow these developments. Please contact the Jackson Lewis attorney with whom you work with questions about the decision and compliance with the FLSA's overtime exemptions.

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