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## DOL's Final Rule Survives Legal Challenges . . . So Far

As we [previously reported](#), the U.S. Department of Labor's [Final Rule](#) took effect on July 1, 2024 and increased the salary threshold under the federal Fair Labor Standards Act for bona fide exempt employees to \$43,888 annually (\$844 per week) and to \$132,964 annually for highly compensated employees.

The Final Rule faced multiple legal challenges before taking effect, predominantly in the U.S. District Court for the Eastern District of Texas, a court known for being skeptical of federal agency action. One case—brought by the State of Texas as an employer—resulted in the Final Rule being enjoined from taking effect (although only for the State of Texas as an employer). In granting the limited preliminary injunction, the court found that the Department of Labor likely exceeded its authority in passing the Final Rule because it systematically excludes millions of employees from a duties-based exemption based on a single criterion—their salary—that, when set so high, has nothing to do with duties. The court refused, however, to apply the preliminary injunction nationwide or to any employer other than the State of Texas, the party that sought the preliminary injunction. Two other cases brought by private employers are pending before the same judge who granted the injunction to the State of Texas. These private employers likewise seek a ruling that the Final Rule is invalid, although briefing will not be complete on their challenge until mid-September. While the fate of the Final Rule remains uncertain, employers that *aren't* the State of Texas will hopefully have clarity before year-end, when the salary threshold is scheduled to increase again on January 1, 2025 to \$58,656 annually (\$1,128 per week) and to \$151,164 annually for the highly compensated exemption.

Employers processing their first payroll following the July 1st effective date of the Final Rule are naturally wondering what to do. One option may be doing nothing (yet) and keeping fingers crossed for a favorable ruling by year-end. A regulation found at 29 C.F.R. § 541.602(a)(3)(i) allows employers to make a final catch-up payment during the last pay period of the year, but no later than the next scheduled pay day after the end of the year, to bring employees' annualized salary in the prior year up to the required level. Under this regulation, an employer could simply leave salaries and classifications alone while awaiting a further ruling from the court in Texas. Of course, an employer that elects this approach needs to understand that if employees remain classified as exempt, the employer will *necessarily* need to make this catch-up payment unless the Final Rule is invalidated before then. The “do nothing yet” option is therefore not suitable for employers that would be unwilling to make a catch-up payment at year-end if the Final Rule remains in place. Other options include reclassifying exempt employees as non-exempt or increasing salaries now to bring them above the required threshold.

Employers who have already acted following the July 1 deadline should plan now for the next salary increase, including monitoring any pending legal challenges that are filed or decided prior to the upcoming January 1, 2025 deadline. Employers also should review the next group of impacted employees and, assuming their positions otherwise meet the duties test of the administrative, executive or professional exemptions, begin deciding whether to adjust salaries to meet the new January 1 threshold or reclassify such employees as non-exempt employees subject to overtime pay under state and federal law. Remember, any reclassification to non-exempt status should include training on relevant timekeeping procedures, prohibitions against off-the-clock work, and any policies requiring prior approval for overtime hours, among others.

If you have any questions about the Final Rule's legal challenges or how the Final Rule may impact your organization, please contact your Kutak Rock attorney or a member of the firm's [FLSA Litigation and Wage and Hour Defense Group](#) or [National Employment Law Group](#). You may also visit us at [www.kutakrock.com](http://www.kutakrock.com).

