

Department of Labor files overtime exemption brief with Fifth Circuit

In a brief filed with the Fifth Circuit of the Federal Court of Appeals, USDOL seeks to preserve salary level in determining overtime exemption status.



On Friday, June 30, the United States Department of Labor filed a brief with the Fifth U.S. Circuit Court of Appeals in New Orleans seeking to preserve a minimum salary requirement as a part of a three-part test to determine which workers are exempt from Fair Labor Standards Act (FLSA) minimum wage and overtime pay protections.

The three-part test, referred to as EAP, (executive, administrative, professional) relates to whether a worker is:

1. Paid on a salary basis
2. Earns a specified salary level
3. Satisfies a duties test

The brief filed Friday concerns the second part.

The brief was filed in the case of *Nevada v. DOL* , 5th Cir., No. 16-41606 by the State of Oklahoma and 20 other states questioning whether the DOL under President Obama had the authority to set the annual salary threshold at \$47,476, just over double the amount previously set in 2004 by the Bush Administration.

The Trump Administration brief asks the court to uphold DOL's legal authority to set the salary threshold, but does not address the appropriate salary level, stating that the court should "simply lift the cloud" created by litigation questioning the Department's authority to establish any salary level test.

"Instead, the department soon will publish a request for information seeking public input on several questions that will aid in the development of a proposal," the agency stated in its brief.

To view the brief, [click this link](#).

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