



PARTNERSHIP TO PROTECT
WORKPLACE OPPORTUNITY

June 11, 2024

Jessica Looman
Administrator Wage and Hour Division
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Dear Administrator Looman:

The Partnership to Protect Workplace Opportunity (PPWO) and the 79 undersigned organizations request the Wage and Hour Division (WHD) stay the effective date of its final overtime rule (89 FR 32842) published in the Federal Register on April 26, 2024, to allow for judicial review, as there are currently several cases that could impact the validity of the new rule.¹ The final rule is currently set to go into effect on July 1, 2024.

PPWO is a coalition of a diverse group of associations, businesses, and other stakeholders representing employers with millions of employees across the country in almost every industry. Formed in 2014, the Partnership is dedicated to advocating for the interests of its members in the regulatory debate on changes to the Fair Labor Standards Act overtime regulations. PPWO's members believe that employees and employers alike are best served with a system that promotes maximum flexibility in structuring employee hours, career advancement opportunities for employees, and clarity for employers when classifying employees.

The Administrative Procedure Act permits agencies to “postpone the effective date of action taken by it, pending judicial review” when “justice so requires.”² During President Biden’s term in office, several agencies have already exercised this authority while litigation was pending over their rules, including the Federal Trade Commission’s CARS Rule,³ the Securities and Exchange

¹ In *Mayfield v. U.S. Dept. of Labor* (No. 23-50724 (5th Cir.)), the U.S. Court of Appeals for the Fifth Circuit is considering the Department of Labor’s statutory authority to implement a minimum salary threshold related to the overtime pay requirements under the Fair Labor Standards Act. The U.S. District Court for the Eastern District of Texas is hearing *Plano Chamber of Commerce v. DOL* (E.D. Tex., No. 24-00468), a lawsuit filed on May 22, 2024, challenging the legality of the substantial increase to the minimum salary threshold included in the final rule as well as the rule’s triennial automatic updates to the threshold. Cases before the U.S. District Courts for the Northern District of Texas (*Flint Avenue LLC v. DOL*, N.D. Tex., No. 5-00130) and the Eastern District of Texas (*State of Texas v. DOL*, E.D. Tex., No. 4-00499) question DOL’s authority to base the overtime exemption on workers’ compensation rather than their job duties; the former also argues acting Secretary of Labor Julie Su does not have authority to issue the rule in her acting capacity, and the latter argues DOL impedes on states’ authority on the issue.

² 5 U.S.C. § 705

³ FTC, Final rule; delay of effective date, “Combating Auto Retail Scams Trade Regulation Rule,” 89 FR 13267, February 22, 2024.



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Commission’s Climate Disclosure Rule,⁴ and the National Labor Relations Board’s Joint Employer Final Rule.⁵

Postponing the effective date of a rulemaking while litigation is pending ensures that impacted businesses and the agency itself do not waste valuable resources by attempting to come into compliance or implement a rule that could be invalidated by a court. For example, if the overtime rule is implemented, it will trigger significant costs for the employer community, but these costs can be avoided if a stay is granted by the Department of Labor and the courts eventually invalidate the rule.

Moreover, a stay of the overtime rule would also protect workers whose terms and conditions of employment may be negatively impacted by the policy changes within the rule. Many workers will be reclassified if the final rule goes into effect, resulting in them losing workplace status, access to benefits, flexible work arrangements, or career development opportunities. These changes should not be made lightly, as the resulting low employee morale and/or decrease in productivity cannot easily be recovered if the rule is eventually invalidated by the courts. When the Obama administration issued its final overtime regulation, the ensuing legal challenge resulted in the rule being struck down only a week before it went into effect. By then many employers had already adjusted employees’ statuses and were unable to undo those changes.

A delay would be a minor change for the Wage and Hour Division, while it could protect many businesses and workers from detrimental consequences. PPWO and the undersigned organizations urge WHD to stay the effective date while litigation is ongoing.

Sincerely,

Partnership to Protect Workplace Opportunity
AASA, The School Superintendents Association
American Association of Advertising Agencies (4A's)
American Bakers Association
American Bankers Association
American Bus Association
American Car Rental Association
American Hotel & Lodging Association
American Society of Travel Advisors (ASTA)
American Staffing Association (ASA)
American Subcontractors Association
American Supply Association

⁴ SEC, Final rules; delay of effective date, “The Enhancement and Standardization of Climate-Related Disclosures for Investors; Delay of Effective Date,” 89 FR 25804, April 12, 2024.

⁵ NLRB, Final rule; delay of effective date, “Standard for Determining Joint Employer Status,” 88 FR 81344, November 22, 2023.



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American Trucking Associations
AmericanHort
Amusement & Music Operators Association
Associated General Contractors of America
Association of Educational Service Agencies
Association of School Business Officials International (ASBO)
College and University Professional Association for Human Resources
Construction Industry Round Table
Consumer Technology Association
El Paso Chamber
Energy Marketers of America (EMA)
FMI – The Food Industry Association
Global Cold Chain Alliance
Health & Fitness Association
HR Policy Association
IAAPA, The Global Association for the Attractions Industry
Independent Electrical Contractors
Independent Lubricant Manufacturers Association
International Bottled Water Association (IBWA)
International Foodservice Distributors Association
International Warehouse Logistics Association
Manufactured Housing Institute
Metrocrest Chamber of Commerce
National Apartment Association
National Armored Car Association
National Association of College and University Business Officers
National Association of College Stores
National Association of Convenience Stores
National Association of Electrical Distributors
National Association of Home Builders
National Association of Independent Colleges and Universities
National Association of Landscape Professionals
National Association of Manufacturers
National Association of Mutual Insurance Companies
National Association of Professional Insurance Agents
National Association of Theatre Owners
National Association of Wholesaler-Distributors
National Beer Wholesalers Association
National Club Association
National Cotton Ginners Association
National Council of Chain Restaurants
National Council of Farmer Cooperatives



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National Demolition Association (NDA)
National Federation of Independent Business
National Grocers Association
National Lumber & Building Material Dealers Association
National Marine Distributors Association
National Multifamily Housing Council
National Public Employer Labor Relations Association (National PELRA)
National Ready Mixed Concrete Association
National Retail Federation
National Rural Education Association
National Small Business Association (NSBA)
National Wooden Pallet & Container Association
Outdoor Power Equipment and Engine Service Association
Pennsylvania Food Merchants Association
Petroleum Equipment Institute (PEI)
PRINTING United Alliance
Saturation Mailers' Coalition
Service Station Dealers of America and Allied Trades
Small Business & Entrepreneurship Council
Texas Association of Business
The Transportation Alliance
Tire Industry Association
Transportation Intermediaries Association (TIA)
Tree Care Industry Association
U.S. Chamber of Commerce
Workplace Solutions Association