



PARTNERSHIP TO PROTECT  
**WORKPLACE OPPORTUNITY**

June 12, 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 95 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.<sup>1</sup> 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.”<sup>2</sup> 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,<sup>3</sup> the Securities and Exchange

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<sup>1</sup> 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.

<sup>2</sup> 5 U.S.C. § 705

<sup>3</sup> 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,<sup>4</sup> and the National Labor Relations Board’s Joint Employer Final Rule.<sup>5</sup>

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  
AICC, The Independent Packaging Association  
Air Conditioning Contractors of America  
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)

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<sup>4</sup> 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.

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



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American Subcontractors Association  
American Supply Association  
American Trucking Associations  
AmericanHort  
Amusement & Music Operators Association  
Associated Builders and Contractors  
Associated General Contractors of America  
Associated Equipment Distributors  
Association of Educational Service Agencies  
Association of School Business Officials International (ASBO)  
Ceramic Tile Distributors Association  
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  
Heating, Air-conditioning, & Refrigeration Distributors International  
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  
ISSA, The Worldwide Cleaning Industry Association  
Kansas Cotton Association  
Manufactured Housing Institute  
Metrocrest Chamber of Commerce  
National Apartment Association  
National Armored Car Association  
National Association of College Auxiliary Services  
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



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National Association of Mutual Insurance Companies  
National Association of Professional Insurance Agents  
National Association of Theatre Owners  
National Association of Wholesaler-Distributors  
National Automobile Dealers Association  
National Beer Wholesalers Association  
National Club Association  
National Confectioners Association  
National Cotton Ginners Association  
National Council of Chain Restaurants  
National Council of Farmer Cooperatives  
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 Tooling and Machining Association  
National Wooden Pallet & Container Association  
Outdoor Power Equipment and Engine Service Association  
Pennsylvania Food Merchants Association  
Petroleum Equipment Institute (PEI)  
Precision Machined Products Association  
Precision Metalforming Association  
PRINTING United Alliance  
Saturation Mailers' Coalition  
Service Station Dealers of America and Allied Trades  
Small Business & Entrepreneurship Council  
Texas Association of Business  
Texas Cotton Ginners' Association  
The Ohio Society of CPAs  
The Transportation Alliance  
Tire Industry Association  
Transportation Intermediaries Association (TIA)  
Tree Care Industry Association  
U.S. Chamber of Commerce  
Workplace Solutions Association