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## Case of the Month

### The U.S. Department of Labor exceeded its authority by adopting the 2024 Minimum Salary Rule under the FLSA.

In 2024, the U.S. Department of Labor (DOL) updated the minimum salary that qualifies an employee for the executive, administrative, or professional (EAP) exemption from overtime under the Fair Labor Standards Act (FLSA). The update was to roll out in two phases: first an increase from \$684 per week to \$844 per week, effective July 1, 2024, then an increase to \$1,128 per week, effective January 1, 2025. Subsequent increases were to occur automatically. Texas and a coalition of business organizations, in separate actions, sued the DOL under the [U.S. Administrative Procedure Act](#) (APA), 5 U.S. Code chapter 5, seeking to halt the new rule. The state was awarded a preliminary injunction. The cases were consolidated, and the federal district court ordered the parties to file cross motions for summary judgment.

The district court reviewed the history of the DOL rules and noted that, early on, the salary-level test worked with a duties-based test to determine if an employee qualifies for the exemption. DOL studied industry salaries and intentionally set the levels low so that the salary-level test did not disqualify more than 10% of employees who would otherwise qualify based on their duties and maintained general applicability of the test across industries and geographic regions. DOL shifted its methodology with time, eventually separating the tests and attempting to significantly raise to the minimum salary and institute an automatic-indexing method in 2016. The 2016 rule was invalidated by a court, and the DOL reverted to an earlier methodology.

The district court then analyzed the FLSA's wording and concluded it is consistent with a duties-based inquiry. The FLSA permits the DOL to define and delimit the exemption's terms, a condition the Fifth Circuit Court of Appeals in [Mayfield v. U.S. Dep't of Labor](#)<sup>1</sup>, 117 F.4th 611 (5th Cir. 2024), concluded allows for a salary-level test. But the Fifth Circuit also stated that an action of the DOL to define and delimit is still bound by the terms of the FLSA. The district court found the changes made by the 2024 rule to be sweeping, resulting in a third of the employees who meet the duties test to be deemed nonexempt under the July increase and 38% deemed nonexempt under the January increase. By putting in place an automatic indexing mechanism, the court found the DOL essentially abdicated its responsibility to define and delimit the exemption and failed to follow the APA rulemaking requirements. The court concluded the rule basically eliminates consideration of the duties test, exceeding the DOL's authority. The district court granted the state's and the business organizations' motions for summary judgment, vacating the rule nationwide. [Tex. v. U.S. Dep't of Labor](#), No. 4:24-CV-499-SDJ, 2024 WL 4806268 (E.D. Tex. Nov. 15, 2024) (mem).

### Why is This Case Significant?

The district court invalidated the 2024 rule nationwide. The case may be appealed by the DOL, a decision that may be affected by the presidential transition. A community college should consult its attorney to determine how to apply the decision to its workforce.

<sup>1</sup> This underlying Fifth Circuit decision was summarized in the [September 2024 Community College Services Legal Update](#).



## From the Courts and the Attorney General

### Governance

General language on a governmental body's meeting agenda indicating that the governmental body may go into closed session but that does not state the subject that is to be discussed in closed session is insufficient to provide the notice required by the [Texas Open Meetings Act](#) (OMA); the OMA attorney consultation exception applies to consultation with an attorney during closed session about potentially retaining the attorney's law firm for legal services. Tex. Att'y Gen. Op. No. KP-475 (Oct. 2, 2024).

### Personnel

Former academic advisor provided sufficient evidence to overcome dismissal of her claims that her supervisor discriminated against her based on her sex, sexually harassed her, and retaliated against her in violation of [Title VII of the Civil Rights Act of 1964](#), including allegations of several unwelcome comments by the supervisor and that she was assigned tasks that could plausibly be considered reassignment to menial and degrading work, actions which led to her resignation. [LiVolsi v. Univ. of Tex.](#), No. 1:24-CV-127-RP, 2024 WL 4849060 (W.D. Tex. Nov. 15, 2024).

Columbian former instructor and graduate student, who repeatedly complained of unfair treatment by a university, failed to provide sufficient evidence to overcome dismissal of his claim the treatment constituted retaliation against him based on claims of race and national origin discrimination in violation of [Title VII. Hincapie v. Tex. Tech. Univ.](#), No. 5:23-CV-299-H, 2024 WL 4607719 (N.D. Tex. Oct. 9, 2024) (mem.).

### Students and Instruction

Student organizations at universities that had updated their speech policies to address the Texas governor's executive order [GA-44](#) on antisemitism provided sufficient evidence to overcome dismissal of their claims brought under [42 U.S.C. § 1983](#) that the actions taken by university officials under the policies impermissibly chill speech and constitute viewpoint discrimination in violation of the U.S. Constitution [First Amendment](#); however, the organizations failed to provide sufficient evidence to overcome dismissal of their claims against the governor and the universities themselves, which were barred by sovereign immunity. [Students for Justice in Palestine v. Abbott](#), No. 1:24-CV-523-RP, 2024 WL 4631301 (W.D. Tex. Oct. 28, 2024).

Student who was suspended for three semesters without guaranteed readmission to a university for violating the university's code of conduct after participating in a campus demonstration failed to demonstrate a substantial likelihood he will prevail on the merits of his [First Amendment](#) claims, which is necessary to obtain a temporary restraining order against the university to halt his suspension. [Qaddumi v. Univ. of Tex. at Austin](#), No. 1:24-CV-1002-DII, 2024 WL 4719630 (W.D. Tex. Oct. 31, 2024).

Taiwanese former graduate student and teaching assistant, who alleged he was required to run an unsafe experiment because he was an international student and pay tuition despite his education being fully funded or be deported, provided sufficient evidence to overcome dismissal of his claims he was subject to race and national origin discrimination and retaliation in violation of [Title VI of the Civil Rights Act of 1964](#) and [Title VII. Liao v. Univ. of Tex. at San Antonio](#), No. SA-22-CV-01359-XR, 2024 WL 4564278 (W.D. Tex. Oct. 23, 2024) (adopting in part the report and recommendation in [Liao v. Univ. of Tex. at San Antonio](#), No. 5-22-CV-01359-XR, 2024 WL 4719631 (W.D. Tex. Aug. 20, 2024)).

Former medical student, who received a lung transplant and suffers from major depressive disorder and who was dismissed from the medical program for not taking a required exam after being denied a leave of absence, failed to provide sufficient evidence to overcome dismissal of her claims that she was a university discriminated against her on the basis of her disability in violation of the federal [Americans with Disabilities Act](#) (ADA) and [Section 504 of the Rehabilitation Act](#). *Salamah v UT Southwestern Health Sys.*, No. 3:24-CV-0477-D, 2024 WL 4606802 (W.D. Tex. Oct. 29, 2024) (mem.).

Former student, who has a history of mental health issues dating to before starting college and who had difficulty finding stable employment but who graduated magna cum laude, failed to provide sufficient evidence of undue hardship to justify the dismissal of her undergraduate and graduate student loan debt. *Hollowell v. U.S. Dept. of Educ.*, No. 23-11082-cgb, 2024 WL 4562569 (W.D. Tex. Oct. 23, 2024).

## Open Records Letter Rulings

This month, the attorney general issued Open Records Letter Rulings<sup>2</sup> based on requests from Texas community colleges related to:

- A peace officer's personnel records. Att'y Gen [OR2024-35221](#) (Oct. 11, 2024);
- Scoring information and bid responses pertaining to a request for proposals. Tex. Att'y Gen. [OR2024-35719](#) (Oct. 21, 2024);
- Information regarding a solicitation. Att'y Gen [OR2024-36103](#) (Oct. 23, 2024), Att'y Gen [OR2024-38304](#) (Nov. 12, 2024), [OR2024-38344](#) (Nov. 12, 2024);
- Information regarding a request for proposal. Att'y Gen [OR2024-36111](#) (Oct. 23, 2024);
- Information on a complaint. Att'y Gen [OR2024-36478](#) (Oct. 25, 2024);
- Information regarding an investigation. Tex. Att'y Gen. [OR2024-37009](#) (Oct. 30, 2024); and
- Information regarding a contract for a service. Att'y Gen [OR2024-37427](#) (Nov. 4, 2024).



## Recent Regulations and Guidance

The Texas Higher Education Coordinating Board (THECB) repealed a [regulation](#) addressing negotiated rulemaking because it duplicated statute.

THECB adopted [regulations](#) establishing the Opportunity High School Diploma Advisory Committee.

THECB adopted and amended [regulations](#) addressing the Opportunity High School Diploma program.

THECB adopted [regulations](#) addressing the approval of self-supporting programs and related reporting requirements.

THECB adopted a [regulation](#) addressing the determination of nonresident tuition rates.

THECB adopted [regulations](#) addressing the Nursing, Allied Health, and Other Health-Related Education Grant Program.

<sup>2</sup> Open record letter rulings are limited to the particular records at issue and the facts as presented to the

attorney general. These rulings must not be relied upon as a previous determination regarding any other records or any other circumstances.

THECB repealed [regulations](#) addressing the Nursing Shortage Reduction Program Rider 28 Study Work Group as the work group completed its work and was disbanded.

THECB adopted, amended, and repealed [regulations](#) addressing the Teach for Texas Loan Repayment Assistance Program, the Mental Health Professionals Loan Repayment Assistance Program, the Peace Officer Loan Repayment Assistance Program, and the Math and Science Scholars Loan Repayment Assistance Program.

The Texas Comptroller amended a [regulation](#) addressing the notice of estimated taxes to be posted online and published by a community college's assessor collector, in response to statutory changes made by the 88th Legislature.

The comptroller amended [regulations](#) addressing administrative hearings to update relevant mailing addresses and procedures for a party to request a rehearing on a tax refund matter.

The Texas Ethics Commission (TEC) adopted, amended, and repealed [regulations](#) addressing the computation of time for purposes of commission deadlines, commission administration, and the filing, investigation, and resolution of ethics complaints.

TEC amended [regulations](#) adjusting the reporting thresholds for contributions and expenditures by certain candidates and committees and the expenditure and compensation thresholds for lobbyists.

The Texas Health and Human Services Commission (HHSC) amended [regulations](#) addressing the suspected diseases and infections that must be reported by certain individuals, such as registered nurses and peace officers, and the methods of reporting.

HHSC adopted and amended [regulations](#) applicable to child-care center directors, in response to statutory changes made by the 88th Legislature.

The Texas Department of Insurance, Division of Workers' Compensation, amended [regulations](#) addressing designated doctor examinations and lifetime income benefits.

The U.S. Department of Education amended a [regulation](#) addressing income contingent repayment plans to revise the deadline for student loan borrowers to enroll in the plans.

The U.S. Copyright Office amended [regulations](#) addressing the temporary exemptions to the prohibition on the circumvention of copyright protection systems for access control technologies, including those regarding the educational use of audiovisual works.



## In the News

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The U.S. Department of Education (ED) officially released the 2025-26 [Free Application for Federal Student Aid \(FAFSA\) form](#).

The President proclaimed November 17 through November 23, 2024, as [American Education Week](#) and [National Apprenticeship Week](#).

The U.S. Department of Labor held [apprenticeship events](#) in conjunction with National Apprenticeship Week and announced [Apprenticeship Ambassadors](#), including Dallas College, Collin College, Houston Community College, and San Jacinto College.