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NCLA Suit Fights DOL’s Unlawful Undermining of Longstanding Wage and Overtime Exemption

Flint Avenue, LLC v. U.S. Department of Labor; Julie Su and Jessica Looman, in their official capacities

Washington, DC (June 4, 2024) – The New Civil Liberties Alliance has filed a [Complaint](#) challenging an unconstitutional new rule from the Department of Labor (DOL) that sets a salary standard for determining whether “white collar” employees are exempt from Fair Labor Standards Act (FLSA) minimum wage and overtime requirements. The new regulation prevents employers, including countless small businesses, from claiming the exemption for 7.7 million employees nationwide. Shrinking this exemption would require employers to reclassify these employees as hourly, thus preventing them from benefiting from flexible work arrangements. Representing the small software company Flint Avenue, LLC, NCLA asks the U.S. District Court for the Northern District of Texas to stop DOL’s new rule. Flint Avenue competes with large corporations by offering its seven employees flexible work arrangements, including unlimited vacation. The new rule would force it to reclassify five of those employees as hourly, making such mutually beneficial arrangements no longer possible.

The FLSA exempts anyone “employed in a [white collar] *capacity*” from its minimum wage and overtime requirements, a definition based on their job’s function, not their pay. This exemption allows Flint Avenue and thousands of other small businesses to compete against larger companies by offering flexible employment options where benefits are not solely based on hours worked. DOL’s new rule effectively erases that standard, prohibiting employees from being eligible for the exemption unless they are paid a fixed weekly salary of at least \$1128 (equivalent to over \$58,000 annually), regardless of their role at the company. The FLSA does not authorize DOL to impose a minimum weekly salary requirement on all white-collar employees in the guise of an exemption. Indeed, delegating that lawmaking power to DOL would violate the Vesting Clause in Article I, § 1 of the Constitution, since the FLSA contains no intelligible principle to guide DOL’s exercise of such authority.

DOL’s new rule also allows it to automatically ratchet up the minimum salary level every three years, ignoring the notice-and-comment requirements of the Administrative Procedure Act and the federal statute that only authorizes exemptions “from time to time by regulation[.]” On top of these myriad problems, Acting Secretary of Labor Julie Su lacked authority to promulgate the new rule in the first place, having claimed secretarial powers for over a year without Senate confirmation in violation of the Appointments Clause.

NCLA released the following statements:

“The Department of Labor is using its authority to define a statutory white-collar *exemption from the federal minimum wage* to impose a federal minimum salary on white-collar employees.”

— **Sheng Li, Litigation Counsel, NCLA**

“Secretary Su is asking to be sued over DOL’s egregious behavior. Unlawfully overstaying her appointment, and now contriving this new FLSA rule that hamstring small businesses, are a sure recipe for losing in federal court.”

— **Mark Chenoweth, President, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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