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NCLA Asks Court to Stop DOL’s Illegal 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 12, 2024) – Today, the New Civil Liberties Alliance filed a [brief](#) in *Flint Avenue v. Department of Labor* urging the U.S. District Court for the Northern District of Texas to grant a stay or preliminary injunction halting an unconstitutional new DOL rule. The rule sets a salary-based standard for determining whether “white collar” employees are exempt from the Fair Labor Standards Act’s (FLSA) minimum wage and overtime requirements. In so doing, DOL’s rule would unlawfully prevent 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. NCLA’s client, Flint Avenue, LLC, is a small software company that competes with large corporations by offering its seven employees flexible 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 statutorily exempts anyone “employed in a [white collar] *capacity*” from its minimum wage and overtime requirements, a definition based on a job’s *function*, not its *salary level*. Flint Avenue is likely to prevail on the merits against DOL’s new rule, which effectively erases that standard by prohibiting employees from being eligible for the exemption unless they are paid a fixed weekly salary of at least \$1,128 (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, Congress could not delegate its lawmaking power to DOL without violating the Vesting Clause in Article I, § 1 of the Constitution.

DOL’s new rule would come into effect on July 1, 2024 for the first set of employees, including one employed by Flint Avenue. It then ratchets up the number of employees affected both nationwide and for NCLA’s client on January 1, 2025. NCLA asks the Court to prevent the rule from going into effect before this illegal regulation can irreparably harm Flint Avenue and other small businesses.

NCLA released the following statements:

“Nothing in the Fair Labor Standards Act gives the Department the authority to set minimum wage for the nation’s 45 million white-collar workers. Only Congress can exercise that power.”

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

“The Administrative Procedure Act empowers federal district courts to stop regulatory actions that have no basis in the law. DOL’s rule, which departs radically from the text of the FLSA, and prior precedent, is one such rule.”

— **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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