In spring 2016, the Department of Labor (DOL), under the Obama administration, announced a regulatory change that contained two particularly jarring changes in overtime law:

1. It raised the minimum weekly salary for exempt employees from $455 to $913.
2. It established a formula ensuring that the minimum weekly salary would increase every three years.

The change would have removed a significant number of lower-paid white-collar employees from overtime exemption. Companies in certain industries such as the nonprofit sector, which often have tight budgets and a strong reliance on dedicated executive staff, were particularly concerned about the impending law, which would have taken effect December 1, 2016.

States (including Ohio) and business groups filed lawsuits to stop the new law. A Texas district court preliminarily enjoined the law's enactment in November 2016, and, on August 31, 2017, invalidated the law.

The court decision hinges on Section 213(a) of the Fair Labor Standards Act of 1938, which provides an exemption from overtime for "any employee employed in a bona fide executive, administrative, or professional capacity," which has come to be known as the "EAP exemption." The DOL is authorized to issue regulations for the law.

Between 1938 and 2004 the DOL revised the regulations several times, attempting to clarify who falls into the EAP exemption. Eventually, the DOL settled on a test that required an examination of the employee's duties (the duties test), the methods of paying the employee's salary (the salary basis test), and the amount of the employee's salary (the salary level test).

The Texas district court determined that the DOL is authorized to define "bona fide executive, administrative, or professional" under the law, but that the new regulation exceeded that authority by over-emphasizing the salary level test to the exclusion of the duties test. Essentially the court determined that the DOL was improperly trying to define "executive, administrative, or professional" simply by how much an employee gets paid.

Although this ruling does not prevent the DOL from making a new effort to revise the law, the general understanding is that the DOL is unlikely to do so under the current administration.

In short, the Texas decision allows employers to avoid a hit to the wallet. Nevertheless, as law, the FLSA remains a sprawling hairball of archaisms, ambiguities, and special interest exceptions that could still benefit from an overhaul that reflects the realities of employment in our technological society.