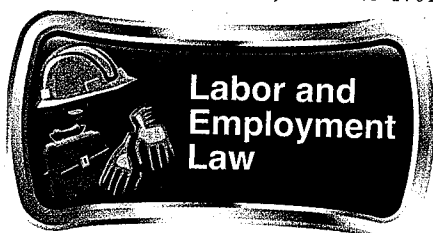


self-disclosures. The new rule changes, *inter alia*, penalty guidelines by removing penalty caps and schedule amounts to provide BIS with more penalty discretion; formalizes the dual-track process for serious and minor/technical violations, with the latter benefiting from a “fast track” procedure aiming to resolve such violations within 60 days; and allows third parties to seek the benefit of GP10 Authorizations to engage in otherwise prohibited activities.

—Edward T. Hayes  
Chair, LSBA International Law Section  
Leake & Andersson, LLP  
Ste. 1700, 1100 Poydras St.  
New Orleans, LA 70163-1701



## 5th Circuit Upholds DOL’s Authority to Determine Salary Threshold for Exemptions Post- *Loper*

In *Loper Bright Enterprises v. Raimondo*, 144 S.Ct. 2244 (2024), the U.S. Supreme Court overruled longstanding U.S. Supreme Court caselaw that required courts to give special deference to federal agencies’ interpretations of laws when Congress did not address the issue in the law itself. The *Loper* court held that it is not agencies, but instead Congress and, in its absence, the courts, that are responsible for interpreting statutes on

specific issues.

On Sept. 11, 2024, the U.S. 5th Circuit Court of Appeals upheld a Department of Labor (DOL) regulation interpreting the Fair Labor Standards Act, distinguishing *Loper. Mayfield v. U.S. Dep’t of Labor*, No. 23-50724, \_\_\_ F.4th \_\_\_, 2024 WL 4142760, at \*4 (5 Cir. Sept. 11, 2024). In *Mayfield*, a fast-food operator based in Texas sued the DOL over its 2019 rule to increase the salary threshold to \$35,568 for certain exemptions to the federal overtime rules, arguing that the rule was beyond DOL’s authority.

The 5th Circuit held that this rule to increase the salary threshold was within the DOL’s authority because the DOL has explicit statutory authority to “define and delimit” the terms of the exemptions to the Fair Labor Standards Act.

This decision matters, but not because of the 2019 DOL rule to increase the salary threshold. In 2024, the DOL substantially increased the salary threshold required for an employee to be exempt from overtime requirements. The current threshold, effective July 1, 2024, is \$43,888 per year. That means that, as of today, employees must be earning a salary of at least \$43,888 to be properly classified as exempt. However, this threshold will not last long as another substantial increase takes effect Jan. 1, 2025, raising the threshold to \$58,656 per year.

Currently, this 2024 DOL rule is facing several legal challenges in courts, but the DOL rule is still in effect. It is almost certain that the DOL will rely heavily on the 5th Circuit’s recent decision in *Mayfield* to support its 2024 salary threshold increase.

—Philip J. Giorlando  
Chair, LSBA Labor Relations and  
Employment Law Section  
Breazeale, Sachse & Wilson, LLP  
Ste. 1500, 909 Poydras St.  
New Orleans, LA 70112-4004



## Eminent Domain Authority for Pore Space Rights for CCS — Act No. 620 (H.B. 492)

As enacted in 2009 (La. Acts 2009, No. 517), La. R.S. 30:1108 in the Louisiana Geologic Sequestration of Carbon Dioxide Act authorized a company that receives a certificate of public convenience and necessity and any required permits from the Office of Conservation to use eminent domain (expropriation) to acquire pore space rights for carbon capture and storage (CCS). As originally enacted, La. R.S. 30:1108(B) provided that the exercise of eminent domain could not be used to “prevent persons having the right to do so from drilling through the storage facility in such manner as shall comply with the rules of the commissioner issued for the purpose of protecting the storage facility against pollution or invasion and against the escape or migration of carbon dioxide.” This was amended by Acts 2022, No. 163, to create La. R.S. 30:1108(B)(2), which provided that, for any CCS project to be located in Caldwell Parish, eminent domain could be used to obtain a prohibition on anyone drilling through the CCS storage reservoir if certain requirements were met.

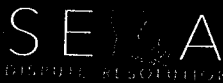
Act 620 amends La. R.S. 19:2 and 30:1108 to prohibit the use of eminent domain to acquire pore space rights for CCS,



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