

Department of Labor's Final Salary Rule Dramatically Increases Scope of Overtime Eligibility

Update

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The US Department of Labor (DOL) released its highly awaited final overtime rule. The final rule dramatically increases the salary threshold for “white collar” workers to be exempt from overtime under the Fair Labor Standards Act (FLSA). The rule substantially impacts most, if not all, employers currently relying on an overtime exemption.[1]

As implied by the name of the final overtime rule, “Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Sales,” the DOL’s substantial increase in the minimum salary required for eligibility for these exemptions will contribute to more limited use of the overtime exemptions.

Unless enjoined by anticipated challenges, the rule is effective July 1, 2024.

What Are the New Salary Levels?

Effective July 1, 2024, executive, administrative, or professional employees (EAP) must receive a minimum salary of \$43,888.00 per year (\$844.00/week) to qualify for the salary requirement of the EAP exemptions.

Effective January 1, 2025, the minimum salary amount increases for the EAP exemptions to \$58,656.00 per year (\$1,128.00/week).

For highly compensated employees (HCE), the annual compensation threshold increases to \$132,964.00 per year on July 1, 2024, and to \$151,164.00 per year on January 1, 2025. For HCEs, while there is some flexibility in accruing this total, HCEs must receive at least \$844.00 per week and then \$1,128.00 per week on a salary basis.

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To appreciate the significant monetary increase, the current thresholds implemented in January 2020 are: \$35,568.00 per year minimum salary for the EAP exemptions and \$107,432.00 per year for HCEs.

The DOL estimates that approximately 4 million workers will qualify for overtime when the rule is fully implemented in January 2025.

Automatic Inflation-Based Salary Increases

Similar to the Obama Administration's 2016 rule, which was completely stalled by legal challenges, the DOL final rule includes updates to the salary levels every three years. These automatic increases are based on earnings data using the US Bureau of Labor Statistics' most recent available data and using "the methodologies in effect at the time of each update."

Interestingly, the final rule departs from the DOL's August 2023 rule by setting higher salary thresholds in the final version and leaving intact the special federal salary levels for US territories.

Quick Review on Exemption Eligibility

A review of the requirements for the white-collar overtime exemptions is helpful to place this final rule in context. To qualify for the EAP exemptions, an employee must meet three basic requirements: (1) perform work that primarily involves executive, administrative, or professional duties as defined in DOL regulations ("duties" prong); (2) be paid a pre-determined fixed salary not subject to reduction due to work quality or quantity ("salary basis" prong); and (3) receive a minimum salary amount (the "salary threshold" prong). The HCE exemption provides a less stringent "duties" prong for individuals otherwise meeting the specific salary requirements of the HCE exemption.

Potential Challenges?

Uncertainty surrounds the legality of the rule. The final rule exceeds levels proposed by the Obama Administration's 2016 rule, which sought to raise the salary level threshold to more than \$47,000.00 per year. Days before that rule was scheduled to take effect, a Texas federal court invalidated that rule.

Challenges to the DOL's 2019 rule are ongoing as the US Court of Appeals for the Fifth Circuit is currently considering whether the Trump-era rule increasing the salary level threshold is authorized by federal law. The appellants are contesting the DOL's fundamental authority to issue **any** salary-level test. Interestingly, in a recent US Supreme Court decision on the salary basis prong

in the context of a daily salary, one of the Justices also seemed to question whether the DOL had the authority to set minimum salary thresholds.

Next Steps to Consider

Absent a successful challenge, the impact of the final rule is immediate as of July 1, 2024.

Current employees qualifying for the duties test will not qualify for the white-collar overtime exemption if they are paid a salary that is less than the new salary level. Employers are faced with the challenge of either (1) re-classifying the employees with salaries falling short of the new minimum salary as non-exempt, overtime-eligible employees; or (2) increasing salaries to meet the DOL's new salary thresholds.

Preparation is essential. Employers should prioritize identifying the potentially affected positions and thoughtfully and strategically consider next steps. These considerations also include analyzing the potential adverse consequences of a change to non-exempt status and implementing changes to avoid these detrimental effects. Avoiding a decrease in compensation and benefits resulting in a change to non-exempt status; facilitating compliance with the recordkeeping provisions for newly non-exempt employees; communicating changes in the most positive manner; considering the effect of an individual's change in exempt status on co-workers and particularly subordinates; handling situations where some in the same position already meet the new salary threshold and others do not; and, evaluating whether future roles and functions may change are just a few of the issues to consider.

In view of the likely challenges to the rule and the possibility that the rule will be enjoined even days before the effective date, employers may want to delay implementing the changes and communications to employees, until July 1, 2024, to be certain that the final rule goes into effect.

[1] Possibly connected to the upcoming presidential election, we are seeing significant final rule-making activity in other agencies as well. See Bracewell's [client alert](#) on April 24, 2024, on the Federal Trade Commission ban on most non-compete agreements.

A version of this article was also published by Law360 on May 1, 2024.