

DOL FINAL RULE INCREASES WHITE COLLAR EXEMPT SALARY THRESHOLDS STARTING JULY 1, 2024

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The Department of Labor has approved a final rule that will raise the salary threshold for overtime-exempt employees under the Fair Labor Standards Act. Here are key takeaways for employers.

WHAT IS THE FAIR LABOR STANDARDS ACT (“FLSA”)?

The FLSA is a federal law that requires the payment of minimum wage to employees, and establishes an overtime premium of one and one-half an employee’s regular rate of pay for hours worked in excess of 40 hours per week. The FLSA contains a number of exemptions to the requirement for paying overtime. Most commonly, employees are classified as exempt under the executive, administrative, and professional exemptions (“EAP”). To qualify for the EAP exemptions, (a) an employee’s job duties must meet one or more of the EAP exemption duties tests, and (b) the employee must be paid a certain minimum salary. Employers may also rely on the highly compensated employee (“HCE”) exemption; HCE employees are those who perform non-manual work and customarily and regularly perform at least one EAP function as a part of their job.

WHAT IS CHANGING?

Under the Department of Labor’s (“DOL’s”) new final rule, the minimum salary for EAP exemptions will increase from \$684 per week (\$35,568 annually) to \$844 per week (\$43,888 annually), effective July 1, 2024. The minimum salary for EAP exemptions will then increase again to \$1,128 per week (\$58,656 annually), effective January 1, 2025.

The HCE salary threshold will increase from \$107,432 annually to \$132,964 annually, effective July 1, 2024, and will then increase again to \$151,164 annually, effective January 1, 2025.

In addition to raising the thresholds for the EAP and HCE exemptions, the new final rule provides for an increase to these salary thresholds every three years, starting July 1, 2027, based on then-current wage data.¹

WHAT DO THESE CHANGES MEAN FOR EMPLOYERS?

Although the changes themselves are simple, there is broad potential impact. The DOL estimates the new thresholds could affect more than three million employees in the United States.

The final rule will likely face legal challenges from industry groups and other interested parties that could delay it becoming governing law. For now, however, employers cannot rely on the

success of these challenges, and must prepare themselves to comply with the final rule's requirements in only a few short months before the rule's initial July 1, 2024 deadline. As initial steps, employers should:

- Identify employees affected by this rule change (namely, employees who have been classified as overtime-exempt under an EAP or HCE exemption but would not earn enough under the new salary minimums).
- Determine, for employees who meet EAP or HCE duties test(s), but who will no longer meet the minimum salary thresholds under the new final rule, whether to increase those employees' salaries to meet the new minimums, or to reclassify those employees as non-exempt and begin providing overtime compensation (even if they otherwise meet an applicable EAP or HCE duties test(s)). This means scrutinizing the cost of paying overtime to these employees (based on anticipated overtime) versus the cost of raising salaries to meet the new minimums.
- Verify that overtime-exempt employees whose salaries meet the new minimums are indeed properly classified as exempt under an applicable EAP or HCE duties test. This means re-visiting applicable duties for employees currently classified as overtime-exempt under an EAP or HCE exemption (an ongoing compliance requirement for employers in any event).
- Evaluate how any re-classification of employees from overtime-exempt to non-exempt interacts with other workplace policies and procedures, for example, relating to fringe benefits, time tracking procedures, and other existing policies and procedures that may differ as between exempt and non-exempt employees and which will need to be updated in light of re-classifying certain employees.
- Be proactive in communications to affected employees.

There will certainly be more to come on these developments in the ensuing days and weeks. In the meantime, we stand ready to help our clients navigate these important changes. Contact Alexander Nassar to leverage the experience of Royer Cooper Cohen Braunfeld LLC's Labor and Employment Practice Group.

¹ The final rule does not apply to the territories of Guam, the U.S. Virgin Islands, Puerto Rico, and the Northern Mariana Islands.

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