

U.S. Department of Labor Issues Final Rule Amending Salary-Level Requirements for Executive, Administrative, or Professional Exemptions under the Fair Labor Standards Act

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On April 23, 2024, the U.S. Department of Labor ("DOL") issued its "Defining and Delimiting Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees" Final Rule (the "Final Rule"). Significant revisions include (1) increasing the standard salary level for certain employees; (2) increasing the highly compensated employee total annual compensation threshold for certain employees; and (3) adding to the regulations a mechanism that will allow for the "timely and efficient" updating of the salary compensation thresholds of certain employees to reflect earnings growth. The Final Rule is effective **July 1, 2024**.

Background

The Fair Labor Standards Act ("FLSA") requires covered employers to pay employees a minimum wage and, for employees who work more than forty (40) hours a week, overtime pay of at least 1.5 times the employee's regular rate of pay. Exempted from this statutory requirement is "any employee employed in a bona fide executive, administrative, or professional capacity." This exemption is commonly referred to as the "white-collar" or executive, administrative, or professional ("EAP") exemption.

To fall within the EAP exemption, an employee generally must meet three tests:

1. Be paid a salary, meaning that they are paid a predetermined and fixed amount that is not subject to reduction because of variations in the quality or quantity of work performed;
2. Be paid at least a specified weekly salary level; and
3. Primarily perform executive, administrative, or professional duties, as provided in the DOL's regulations.

The employer bears the burden of establishing the applicability of the exemption. Job titles and job descriptions do not determine EAP exemption status, nor does merely paying an employee a salary.

On August 30, 2023, the DOL issued a Notice of Proposed Rulemaking with respect to the salary threshold of EAP and highly compensated employees. On April 23, 2024, the DOL issued its Final Rule.

Final Rule

The Final Rule increases the standard salary level and the highly compensated employee total annual compensation threshold on its effective date, July 1, 2024. On January 1, 2025, when changes in the methodologies used to calculate these levels become applicable, the standard salary level and highly compensated employee total annual compensation threshold again increases. The Final Rule also provides for future updates of these levels every three years to reflect current earnings data. The scheduled increases are:

Date

Standard Salary Level

Highly Compensated Employee Total Annual Compensation Threshold

Before July 1, 2024

\$684/week (\$35,568/year)

\$107,432 per year, including at least \$684 per week paid on a salary or fee basis.

July 1, 2024

\$844/week (\$43,888/year)

\$132,964 per year, including at least \$844 per week paid on a salary or fee basis.

January 1, 2025

\$1,128/week (\$58,656/year)

\$151,164 per year, including at least \$1,128 per week paid on a salary or fee basis.

From July 1, 2027, and every three (3) years thereafter, the standard salary level and highly compensated employee total annual compensation threshold will be determined by "applying available data and methodology used to set the salary level in effect at the time of the update."

It is likely that the Final Rule will face legal challenges. For instance, by incorporating higher salary thresholds, the Final Rule arguably excludes employees who perform exempt work, which would conflict with the FLSA's text and intent. In addition, although the DOL's triennial review power would make substantive changes to DOL regulations, the rule provides no provision for full notice and comment, potentially violating the Administrative Procedure Act.

While legal challenges to the Final Rule are likely but not certain, employers presently have until the **July 1, 2024** effective date to review their exempt classifications and make adjustments necessary to comply with the Final Rule.

Members of the Labor and Employment Group at White and Williams LLP are available to assist employers with guidance under the new Supreme Court decision. If you have questions, please contact Joseph M. Carr (carrj@whiteandwilliams.com; 610.782.4907) or another member of the Labor and Employment Group.

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