

April 25, 2024

The DOL Announces New Overtime Exemption Rule Increasing the Salary Threshold for Exempt Employees

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On April 23, 2024, the U.S. Department of Labor's (DOL) Wage and Hour Division (WHD) announced a final rule, "[Defining and Delimiting the Exemptions for Executive, Administrative, Professional \(EAP\), Outside Sales and Computer Employees](#)," increasing the salary threshold for an employee to qualify for exempt status under the Fair Labor Standards Act (FLSA). The final rule takes effect on **July 1, 2024**. The DOL estimates that 4 million workers who are currently classified as exempt under the FLSA will become newly non-exempt and, therefore, entitled to overtime. While there may be legal challenges to the final rule that delay its implementation, employers should not wait to review employee classification and be caught unprepared.

Brief Overview

As most employers are aware, certain employees may be exempt from the FLSA's overtime requirement if they meet the criteria. To fall within the Executive/Administrative/Professional exemption (the "EAP exemption"), an employee generally must:

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 (the "salary basis test");
2. be paid at least a specified weekly salary level (the "salary level test"); and
3. Primarily perform executive, administrative, or professional duties, as provided in the DOL's regulations (the "duties test").

The DOL's regulations also provide an alternative test for certain highly compensated employees ("HCEs") who are paid a salary, earn at least a higher total annual compensation level, and satisfy a minimal duties test.

Increased Salary Thresholds

The salary thresholds are scheduled to increase as follows:

Date	EAP Exemption Salary Threshold	HCE Salary Threshold
Current	\$684/week (\$35,568/year)	\$107,432/year
July 1, 2024	\$844/week (\$43,888/year)	\$132,964/year
January 1, 2025	\$1,128/week (\$58,656/year)	\$151,164/year
July 1, 2027, and every three years thereafter	To Be Determined	To Be Determined

What Employers Should Do Now

The final rule is a major adjustment to the salary threshold that will affect most employers. Any employers who utilize the EAP or HCE exemptions should consider taking the following steps to prepare:

- *Perform an internal audit.* Employers should closely review their employee rosters and determine whether any employees who are currently classified as exempt will no longer qualify for exemption based on the increasing salary thresholds. Employers should also use this opportunity to look at employee job descriptions and reevaluate whether exempt positions are properly classified based on job duties.
- *Develop a strategy.* There is no one-size-fits-all answer for how employers should handle their employees who will no longer qualify for exemption as a result of the increasing salary thresholds. In some cases, it will make the most sense for the employer to raise the employee's salary to meet or exceed the threshold. In other cases, it will make more sense to reclassify the employee as non-exempt. Employers may also want to consider requiring advance approval for employees to work overtime. Consult with experienced employment counsel to address your company's unique situation.
- *Review timekeeping practices.* With even more non-exempt employees in the workforce, now is a good time for employers to review their timekeeping practices to ensure that they are accurately recording all hours worked by employees in compliance with the FLSA's recordkeeping requirements and any applicable state wage and hour laws. Employers should remember that in many states, non-exempt employees are subject to rigorous meal and rest break laws.
- *Consider applicable state laws.* Some states, like Washington and California, have higher salary thresholds that employers must take into account.
- *Take equal pay laws into account.* As adjustments are made, employers must be mindful of any applicable federal or state equal pay laws.
- *Update policies and provide training.* Managers and newly reclassified employees alike will need training on how to handle the shift from exempt to non-exempt status. For example, they will need to understand timekeeping requirements, overtime approval, and meal and rest break policies. Employees and managers also must understand that work should not be performed off-the-clock—even something as minor as an after-hours email. The employer's handbook will likely need to be updated to reflect any changes, including remote work and personal device policies.
- *Provide advance notice of any changes.* Employers should provide affected employees with advance written notification of any changes to their compensation.

If you have any questions about the DOL's final rule, please feel free to contact the attorneys listed below:

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