

LEGAL UPDATES

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The DOL Announces Final Overtime Rule Increasing FLSA Salary Basis

Yesterday, the U.S. Department of Labor (DOL) announced its final overtime rule that completes the rulemaking process announced in August 2023 and raises the salary basis for overtime exemptions under the Fair Labor Standards Act (FLSA).

Key points

Effective July 1, 2024, the final rule increases the standard salary threshold from \$684 per week (\$35,568 per year) to \$844 per week (\$43,888 per year).

Effective January 1, 2025, the standard level will increase again to \$1,128 per week (\$58,656 per year).

Effective July 1, 2024, the final rule increases the “highly compensated employee” (HCE) total annual compensation threshold (the level at which a relaxed duties test is applied) from \$107,432 to \$132,964 per year.

Effective January 1, 2025, the HCE level will increase again to \$151,164 per year.

The final rule continues the use of non-discretionary bonuses and incentive payments to satisfy up to ten percent of the standard and special salary thresholds under certain circumstances.

The final rule includes a new mechanism that automatically increases the executive, administrative, and professional (EAP) salary threshold every three years (beginning on July 1, 2027).

The final rule does not change the existing job duties tests for any exemption.

The two most recent increases to the salary thresholds have been challenged in court, and the proposed rule will likely be challenged as well.

Background

As discussed in an earlier Husch Blackwell's Labor and Employment Law Insights blog post during the rulemaking process, the FLSA requires employers to provide overtime pay to employees at one and one-half times an employee's regular pay rate for every hour the employee works beyond 40 hours in a workweek, unless the employee falls within a specified exemption. Under current DOL regulations, exempt employees include executive, administrative, professional, and computer employees who perform certain duties and earn at least \$684 per week (\$35,568 annually). The current regulations also exempt HCEs who perform office or nonmanual work and are paid a total annual compensation of at least \$107,432.

Increased salary thresholds for EAP exemptions

The DOL's final overtime rule increases the standard salary level requirement for executive, administrative, professional, and computer employees in two stages:

On July 1, 2024, the standard level will increase from \$684 to \$844 per week (\$43,888 annually).

On January 1, 2025, the standard level will increase to \$1,128 per week (\$58,656 annually).

The intermediate threshold was calculated using the 20th percentile of weekly earnings of full-time salaried workers in the lowest-wage census region (currently the South) and the final level was set using the 35th percentile.

The final rule also increases the annual total compensation threshold for HCEs in two stages:

On July 1, 2024, the HCE level will increase from \$107,432 to \$132,964 per year.

On January 1, 2025, the HCE level will increase to \$151,164 per year.

The intermediate HCE threshold was calculated using the 80th percentile of full-time salaried workers nationally, and the final level was calculated using the 85th percentile.

The DOL estimates that the final salary thresholds will result in approximately 4 million workers either becoming eligible for overtime or receiving salary increases to remain exempt.

Automatic future salary threshold updates

The final rule includes a mechanism for automatically updating these salary and compensation levels every three years based on then-current earnings data. The first automatic update will occur on July 1, 2027.

No impact on bonuses

The final rule makes no change to the current rule allowing employers to use non-discretionary bonuses and incentive payments (including commissions) to satisfy up to ten percent of the standard or special salary level for the exemptions.

Subject to judicial challenge

This final rule is bound to face legal challenges similar to those faced by prior rules increasing the salary thresholds. A federal court in Texas invalidated the Obama administration's 2016 rule (which would have raised the standard salary level from \$455 to \$933 per week) less than ten days before it was to take effect. And a challenge to the Trump administration's 2019 rule (which raised the threshold from to \$455 to the current level of \$684) is on appeal in the Fifth Circuit. A Republican congressman has proposed legislation that seeks to prohibit the Secretary of Labor from implementing and enforcing the rule, but this proposed legislation has little chance of becoming law prior to the final rule becoming effective.

In a stated effort to avoid the judicial fate of the Obama administration's 2016 rule, the current DOL adopted a less aggressive methodology for the final rule, setting the salary threshold at the 35th percentile of full-time salaried workers in the lowest-wage Census Region (rather than the 40th percentile used in 2016). By comparison, the Trump administration's 2019 rule used the 20th percentile.

What this means to you

Even with the uncertainty surrounding the enforcement of this final overtime rule, employers should:

1. Review their employees' exempt statuses and determine which employees may be affected by this final overtime rule (i.e., those who make less than \$844 or \$1,128 per week);
2. Prepare to increase compensation or change exempt classification by July 1, 2024, for employees affected by the initial salary threshold increases (up to \$844 per week for the specific employees discussed above and \$132,964 annually for HCEs); and
3. Prepare to increase compensation or change exempt classification by January 1, 2025, for employees affected by the full salary threshold increases (up to \$1,128 per week for the specific employees discussed above and \$151,164 annually for HCEs).

Some employers may choose to delay implementing changes until closer to the deadline to give time for the Fifth Circuit to determine the viability of the 2019 rule and/or for a court to address challenges to the new rule.

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Husch Blackwell will continue to monitor the rule's progress and provide updates as information is available.

Contact us

If you have questions regarding the implementation of the DOL's final rules regarding overtime, please contact A.J. Weissler, Scott Meyers, Sarah Hamill, or your Husch Blackwell attorney.