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DOL final rule expands overtime eligibility

On April 26, the DOL issued its long-awaited final rule to update and revise the FLSA's so-called "white collar" overtime exemptions, raising the minimum weekly salary threshold to qualify for the exemptions from \$684 to \$1,128. Under the final rule, roughly four million workers who are currently classified as exempt would become overtime eligible by January 2025.

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Background

Employees covered by the federal Fair Labor Standards Act (FLSA) must receive pay for hours worked in excess of 40 in a workweek at a rate not less than one-and-one-half times their regular rate of pay ("overtime" pay) unless they qualify for an exemption. Under existing regulations last updated in 2019, employees who qualify for one of the FLSA's three main "white collar" overtime exemptions — executive, administrative, or professional (EAP) — are not entitled to overtime pay if they (1) are paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the "salary basis test"), (2) earn a minimum weekly salary of \$684 (\$35,568 per year) (the "salary level test"), and (3) primarily perform certain EAP duties as defined by DOL regulations (the "duties test"). (See our [September 26, 2019 FYI Alert](#).)

Current regulations also contain an overtime exemption for certain highly compensated employees (HCEs). To qualify for the HCE exemption, employees must receive total annual compensation of at least \$107,432, which includes at least \$684 per week paid on a salary or fee basis, and they must perform office or nonmanual work and satisfy a less restrictive EAP duties test.

In September 2023, the DOL proposed regulations to revise the FLSA's white collar overtime exemptions. The proposal called for raising the EAP exemption threshold from \$684 to at least \$1,059 per week and the HCE earnings threshold from \$107,432 to \$143,988 per year. (See our [September 11, 2023 FYI Alert](#).)

DOL's final rule

On April 26, the DOL issued its highly anticipated final rule *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees*. The final rule phases in increased EAP exemption thresholds in two steps.

- Effective July 1, the minimum weekly salary level for an EAP exemption would increase from the current \$684 per week to \$844 per week (\$43,888 annually for a full-year worker) — the 20th percentile of weekly earnings of full-time salaried workers in the lowest wage Census Region (currently the South). The HCE total annual compensation threshold would increase from the current \$107,432 to \$132,964 — the annualized weekly earnings of the 80th percentile of full-time salaried workers nationally.
- Effective January 1, 2025, the minimum weekly salary level for an EAP exemption would increase to \$1,128 per week (\$58,656 annually for a full-year worker) — the 35th percentile of weekly earnings of full-time salaried workers in the lowest wage Census Region (currently the South). The HCE total annual compensation threshold would increase to \$151,164 — the annualized weekly earnings of the 85th percentile of full-time salaried workers nationally.

Beginning July 1, 2027, the earnings thresholds would be automatically adjusted every three years — tied to current wage data and using the methodology in effect at the time of the update.

Buck comment: Because the initial phase uses the same methodology as the 2019 rule that set the current thresholds, it may enjoy some protection against legal challenge. However, the second phase uses a different methodology that may encourage greater scrutiny.

Other tests and exemptions

While the final rule increases salary level and total annual compensation requirements for the EAP and HCE exemptions, it does not change the currently applicable salary basis or duties tests. Nor does it impact the outside sales and computer employee exemptions. In a notable departure from the proposed regulations, the final rule does not apply the new salary level for EAP exemptions to the U.S. territories subject to the federal minimum wage (including Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands), or increase the special salary levels for American Samoa and the motion picture industry.

Potential impact

Should the final rule survive expected legal challenge and go into effect, roughly four million workers who are currently classified as exempt are expected to become overtime eligible by January 2025. To ensure compliance, employers will have to consider, among other things, whether to: increase employee salaries to retain current exemptions; reclassify employees as non-exempt and pay them overtime; reduce hours; adjust workloads; or hire more part-timers. In addition to potentially increased labor costs, employers may also face employee morale challenges surrounding reclassification and some pushback from workers whose timekeeping, rest and meal breaks, benefits, remote or other work options may be impacted.

Buck comment. While the final rule would not impact employers in states such as New York and California that already have overtime laws with higher exemption thresholds, employers in other states will have to assess the potential impact on their operations, pay practices and job classifications.

In closing

The final rule is slated to take effect July 1. Although the rule is expected to be met with legal challenges, employers should act quickly to identify and evaluate positions compensated at, near or below the new thresholds and begin to consider whether to reclassify employees, raise salaries or make other adjustments if and when it becomes effective.

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