

Insights: Alerts

Department of Labor Issues Final Rule Expanding Overtime Eligibility by Increasing Salary Thresholds

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We previously [reported](#) on the Department of Labor's ("DOL") Notice of Proposed Rulemaking ("NPRM") regarding overtime eligibility. The DOL estimated that the NPRM, as drafted, would make approximately 3.6 million U.S. workers eligible for overtime pay. After reviewing over 33,000 comments on its NPRM, and revising the proposed rule, on April 23, 2024, the DOL issued its final rule regarding overtime eligibility under the Fair Labor Standards Act ("FLSA").

Increased Salary Threshold Under DOL's Final Rule

Currently, employees whose standard salary level is \$684.00 per week (equivalent to \$35,568.00 per year) meet the salary threshold for an executive, administrative, and professional employee ("EAP") exemption under the FLSA. The DOL rule sets forth a multi-phased schedule that changes the salary threshold for EAP exemption and highly compensated employees three times over the next three years.

First, beginning **July 1, 2024**, the salary threshold increases and employees whose standard salary level is \$844.00 per week (equivalent to \$43,888.00 per year) will meet the salary threshold for EAP exemption under the FLSA. The threshold then changes on **January 1, 2025**, and employees whose standard salary level is \$1,128.00 per week (equivalent to \$58,656.00 per year) will meet the salary threshold for EAP exemption under the FLSA.

After the aforementioned two rapid increases, the \$1,128.00 per week threshold remains in place for two and a half years until **July 1, 2027**, when a new salary threshold is established. The DOL rule does not contain an enumerated salary threshold after July 1, 2027, and instead shifts the threshold to be based on the calculation of the 35th percentile of weekly earnings of full-time non-hourly workers in the lowest-wage Census Region. Thereafter, the salary threshold amount will be recalculated every three years according to that methodology.

The DOL rule also addresses and changes the salary threshold for highly compensated employees. The current threshold for the highly compensated employee exemption is \$107,432 per year, including at least \$684.00 per week on a salary or fee basis. The annual compensation threshold changes occur on the same schedule as the EAP exemption salary threshold changes. On **July 1, 2024**, the annual compensation threshold increases to \$132,964.00 per year, including at least \$844.00 per week on a salary or fee basis. Next, on **January 1, 2025**, the annual compensation threshold increases to \$151,164.00 per year, including at least \$1,128.00 per week paid on a salary or fee basis. Finally, on **July 1, 2027**, the threshold annual compensation amount shifts from an

enumerated amount pre-set by the DOL to a calculation-based approach that is the annualized earnings amount of the 85th percentile of full-time non-hourly workers nationally. Thereafter, the annual compensation threshold amount is recalculated using that methodology every three years.

The DOL issued a chart summarizing the timeline, which can be found at this [link](#).

Key Takeaways for Employers

This rule is likely to face multiple challenges, but in the meantime, it is imperative that employers proactively address the impact the new salary thresholds will have on their workforce, especially in light of the phased approach. Failure to track the dates that these changes are occurring and prepare for a significant rise in non-exempt employees could lead to internal problems and a heightened risk for litigation. We note that while the NPRM did discuss including the salary threshold change in the United States territories, it chose to reserve this for a future final rule.

To prepare internally, employers should consider the following questions, among others:

- How are we going to track the dates where salary thresholds change?
- How many of our employees will be impacted by the increased salary thresholds?
- Are our timekeeping systems up-to-date and accurate and can they accommodate a significant increase in employees tracking their time?
- Are we going to want to increase employee salaries to meet an increased threshold?
- How do we communicate these new rules to our employees?
- Do we need to train our employees and managers in light of the final rule?
- Should we engage in an FLSA exemption audit?

Kilpatrick Townsend's Labor & Employment team is here to assist with these, as well as any other questions or needs. Our team will continue to monitor any additional updates or material issued by the DOL and update this Legal Alert accordingly.

Related People



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