

DEPARTMENT OF LABOR AIMS TO DRAMATICALLY EXPAND OVERTIME EXEMPTIONS

September 12, 2023

The United States Department of Labor (DOL) announced its intent to adjust one of the most critical thresholds for determining eligibility for overtime exemption—the amount of the salary basis.

Under the Fair Labor Standards Act (FLSA), an employee who works more than 40 hours in a given workweek qualifies for overtime at one and one-half times the employee's hourly rate for all hours worked over 40, unless the employee qualifies for an exemption. In addition to the applicable duties the worker must perform, the Executive, Administrative and Professional exemptions (EAP Exemptions) each requires pay on a salary basis of at least \$684 per week (\$35,568 annualized). The FLSA also provides for a Highly Compensated Exemptions (HCE) for those employees performing one or more of the duties in the EAP Exemptions and earning \$107,432 annually.

The DOL's proposed [New Rule](#) adjusts the salary basis thresholds for both the EAP Exemptions and the HCE upward and accounts for future increases, as follows:

- The new minimum weekly salary basis threshold for the EAP Exemptions jumps to \$1,059 per week (\$55,068 annual);
- These standard levels will apply to Puerto Rico, Guam, the U.S. Virgin Islands and the Commonwealth of the Northern Mariana Islands, and there will be increase special salary levels for American Samoa and the motion picture industry;
- The new minimum threshold salary to qualify for the HCE increases to the annualized earnings of the 85th percentile of full-time salaried workers nationally, which is \$143,988 presently; and
- The earnings thresholds will update automatically every three years with then current wage data.

Presently, the DOL is undergoing the [60-day comment period](#), after which the DOL will issue a final rule and employers will need to comply. While previous attempts to increase the salary basis under the EAP Exemptions and the HCE led to judicial intervention, employers should be proactive to address their present circumstances to determine whether any of their employees would be affected.

Bell Nunnally's Labor and Employment group will continue to monitor developments and is able to help employers prepare for these changes.

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