

NEW DOL OVERTIME RULE SIGNIFICANTLY RAISES SALARY THRESHOLDS

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In a new development that will impact the wage and hour policies for many employers, the U.S. Department of Labor (DOL) raised the minimum salary threshold necessary to consider an employee exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) on April 23, 2024. The rule applies to the “white collar” and “highly compensated employee” (HCE) exemptions.

White Collar Exemption Threshold Raised 65%

This exemption applies to employees employed in a bona fide executive, administrative or professional capacity who: (1) receive a salary that is equal to or greater than the threshold set by the DOL and is not based on hours worked or quality of work performed; and (2) primarily perform executive, administrative or professional duties as defined by the DOL. The current salary threshold is \$684 per week (\$35,568.00 annually). Under the new rule, the threshold increases to \$844 a week (\$43,888.00 annually) as of July 1, 2024. Then the threshold increases to \$1,128.00 per week (\$58,656.00 annually) on Jan. 1, 2025. The threshold will be updated every three years starting July 1, 2027.

HCE Exemption Salary Threshold Raised 40%

The HCE exemption applies to employees who are: (1) paid a total annual compensation in excess of a salary threshold set by the DOL (currently \$107,432), including at least the minimum weekly basis of the white-collar exemption; (2) primarily perform office or nonmanual work; and (3) customarily and regularly perform at least one of the duties or responsibilities of the white-collar exemption. Effective July 1, 2024 the HCE salary threshold will increase to \$132,964.00 a year and then go to \$151,164.00 a year on Jan. 1, 2025. It too will be updated every three years starting July 1, 2027.

Job Duties Tests Remain the Same

Besides having a salary minimum threshold, the white collar and HCE exceptions contain job duties components that also must be met for the exemption from overtime pay to apply, and those components remain unchanged.

Takeaway For Employers

If this rule survives expected legal challenges, it will expand the population of HCE and white collar workers who will now be entitled to receive overtime compensation.

In all likelihood the new rule will be challenged in a court proceeding in which an injunction against enforcement of the rule will be sought. In 2016 a similar rule passed by the Obama administration was enjoined from enforcement nationwide by a Texas federal district court which held that the DOL exceeded its delegated statutory authority under the FLSA by raising the minimum salary level such that it supplanted the duties test under the FLSA; but an appellate court never ruled on the district court's decision because the Trump administration changed the rule. Additionally, the current U.S. Supreme Court has been critical of administrative agency rule making, especially overbroad, sweeping regulations. Given the odds are that the new rule will be challenged and possibly enjoined from going into effect, employers probably should not take immediate steps to comply with the new rule because once changes are made it could be awkward, if not difficult, to rescind them in the event that the new rule is enjoined.

However, since employers cannot rely upon the new rule being enjoined, they need to make a thorough analysis of each employee they currently classify as exempt but whose current salary does not reach the new minimum thresholds to determine whether it makes economic and business sense to increase the employee's pay to reach those thresholds or to reclassify the employee as non-exempt. Once the decisions are made, employers need to take the steps to assure that they can implement them by July 1 to make sure those employees it wants to remain exempt do not lose their exemptions and to comply with the overtime and record keeping requirements for the employees who they decide to reclassify as non-exempt.

In the meantime, we will keep you advised as to all developments with respect to this rule, including on any legal challenge to it.

Related Practices

Labor and Employment

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