

PUBLICATION

Tight Around the White Collar – The New Overtime Rule is Here

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As anticipated, the U.S. Department of Labor (DOL) published its final rule amending the overtime regulations of the federal wage and hour law, the Fair Labor Standards Act (FLSA) yesterday, April 23, 2024. The new rule requires an increase to the salary threshold for executive, administrative, and professional workers (EAP) and Highly Compensated Employees (HCE) to qualify for exemption from overtime. Employers must comply with the final rule by July 1, 2024. The final rule also phases the salary threshold changes in two incremental increases and provides for regular updates of these salary thresholds every three years beginning July 1, 2027, to reflect current earnings data. The DOL is estimating that 4 million workers will be impacted by the new rule and become eligible for overtime.

Executive, Administrative, and Professional Workers

The new DOL rule increases the salary threshold for exemption from the current \$684 per week (\$35,568 annually) to \$1,128 per week (\$58,656 annually). This change, however, is two-tiered.

By July 1, 2024, the salary threshold requirement for the EAP exemptions initially increases to \$844 per week (\$43,888 annually). Then, six months later, on January 1, 2025, the salary threshold increases again to \$1,128 per week (\$58,656 annually). This final increase is based on the 35th percentile of earnings for full-time salaried workers in the lowest-wage Census Region, which is the South. The 2025 threshold represents an almost 70 percent increase from the current salary threshold and is slightly higher than the salary threshold in the DOL's proposed rule. Employers may still use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to ten percent of the salary level. For employers to credit nondiscretionary bonuses and incentive payments toward a portion of the standard salary level, such payments must be paid on an annual or more frequent basis and an employer may make a "catch-up" payment at the end of each 52-week period.

The adjustment in salary thresholds means that employees earning less than the new thresholds, \$58,656 annually, would no longer qualify for the overtime exemption and therefore become eligible for overtime pay.

It is a common misconception that a "salaried employee" is the same as an "exempt employee." Paying a salary alone, however, is not enough to be exempt from the FLSA overtime requirements. To determine if a position is exempt from overtime, the position must satisfy three criteria:

1. **Salary or Fee Basis:** The employee must be paid on a "salary or fee basis." A salary basis means that the employee is paid a predetermined and fixed amount of pay for each pay period regardless of the quality or quantity of work performed. A fee basis means an employee is paid an agreed sum for a single job, regardless of the time required for its completion.
2. **Salary Level/Threshold:** The DOL sets a minimum salary threshold to qualify for exemption (currently it is \$684 per week). For employees paid on a fee basis, the fee payment must also satisfy the minimum salary level requirement, meaning the fee payment must be at a rate that would amount to the salary threshold per week if the employee worked 40 hours.

3. **Job Duties:** Each category of white-collar or EAP exemption has its own criteria relating to the primary job duties the employee performs. In addition to being paid on a salary basis at the mandated salary threshold, the employee must satisfy every job duty requirement for one of the EAP categories to qualify for exemption.

Highly Compensated Employees

The DOL regulations also have a specialized white-collar exemption for what are deemed "Highly Compensated Employees." Because these employees earn at top levels, there is a more streamlined requirement to qualify for exemption when it comes to their exempt job duties.

If an employee is highly compensated in accordance with the DOL regulations, they are only required to demonstrate that they customarily and regularly perform at least one of the exempt duties or responsibilities of an EAP employee rather than satisfying an entire job duties test.

HCE salary thresholds are based on total annual compensation. This includes not only the base salary but also other forms of compensation such as bonuses, commissions, and certain types of benefits. HCE employees must still be paid, at a minimum, the EAP salary threshold weekly. The current HCE threshold of \$107,432 per year is increasing to \$151,164 per year, aligning with the 85th percentile of full-time salaried workers nationally. Like changes to the EAP salary threshold, this will be implemented in two phases. The HCE salary threshold will initially increase on July 1, 2024, to \$132,964 total annual compensation (with a minimum weekly payment of the EAP threshold of \$844). The HCE threshold will increase again on January 1, 2025, to \$151,164 total annual compensation (with a minimum weekly payment of the EAP threshold of \$1,128).

If an HCE employee no longer meets the new salary threshold, employers should evaluate whether the position satisfies all the job duty requirements of one of the EAP exemptions for the employee to remain exempt from overtime.

Key Takeaways for Employers

Employers should note the following important dates to be compliant with the new rule and plan ahead for future adjustments:

- **July 1, 2024 | First incremental salary increase for both EAP and HCE**
 - EAP - \$844 per week or \$43,888 annually
 - HCE - \$844 per week on a salary or fee basis and \$132,964 total annual compensation
- **January 1, 2025 | Second salary increase for both EAP and HCE**
 - EAP - \$1,128 per week or \$58,656 annually
 - HCE - \$1,128 per week on a salary or fee basis or \$151,164 total annual compensation
- **July 1, 2027, and every three years from that date | Updates of salary thresholds to reflect current earnings data**

In advance of the initial July 1, 2024, salary increase deadline, employers need to identify which employees will be affected by these changes and assess how to handle changes to employee statuses.

This may involve adjusting payroll systems, redefining job descriptions, or modifying work hours to manage labor costs effectively. Moreover, clear communication and training will be crucial to smoothly transition of affected employees and minimize any disruptions or misunderstandings.

The swift implementation of these changes, paired with substantial increases in the salary thresholds, may prompt legal challenges like those faced by previous attempts to amend the FLSA's overtime provisions.

Employers should stay informed about the legal landscape and be prepared to make further adjustments if the rule is challenged in court.

If you have any questions about these changes, or any other labor and employment topic, contact any member of Baker Donelson's [Labor & Employment Team](#).

Additional Resources

- On April 16, we hosted a [webinar](#) in advance of the final rule announcement that offered guidance on planning, budgeting, and preparing for these changes.
- [Click here](#) to view our FAQs based on initial client outreach.