



u.s. department of labor issues much-anticipated final rule increasing exempt employee salary threshold

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MSK Client Alert

May 3, 2024

Late last month, the U.S. Department of Labor (DOL) announced that it would be increasing the salary levels for certain employees to qualify as exempt from minimum wage and overtime payment obligations under the federal Fair Labor Standards Act (FLSA). The new rule applies to employees who are subject to either (1) the "executive, administrative, or professional" (EAP) exemption (also known as the "white collar" exemption), or (2) the "highly compensated employee" (HCE) exemption.

Generally, an employee is EAP exempt if they are (1) paid a salary not subject to reduction because of variations in the quality or quantity of work performed, (2) paid at least a specified weekly salary level (which used to be \$684 per week), and (3) primarily perform executive, administrative, or professional duties.

Unlike EAP exempt employees, in order to qualify as HCE exempt, an employee does not need to be paid a fixed or weekly salary level. Instead, HCE's are exempt from minimum wage and overtime payment obligations if they earn a certain total annual compensation (which used to be \$107,432) and satisfy a minimal duties test.

There are limits to the impact of the DOL's new rule, however. First, it only changes the salary threshold for EAP exempt employees and the total annual compensation level for HCE's. Second, the rule will not impact employees in states such as California or New York, where the state law thresholds for these exemptions already exceed the new federal levels. Still, the DOL anticipates that the rule will impact about 4 million employees throughout the United States.

There are three phases to the DOL's new rule.

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Phase 1: July 1, 2024 Increases

Starting on July 1, 2024, the new minimum annual salary threshold to qualify as an EAP exempt employee or HCE will substantially increase. To qualify as EAP exempt, an employee must make the equivalent of an annual salary of \$43,888, *i.e.* be paid \$844 per week. This is an increase from the current threshold of \$35,568, or \$684 per week. According to the DOL, this new threshold represents the 35th percentile of pay for full-time salaried workers in the lowest-wage census region. The DOL will also increase the minimum total annual compensation to qualify as an HCE from \$107,432 to \$132,964.

Phase 2: January 1, 2025 Increase

On January 1, 2025, the DOL will increase the compensation thresholds a second time. HCE's will be defined as employees whose total annual compensation exceeds \$151,164. This salary level represents the 85th percentile of full-time salaried workers in the United States. And the threshold annual salary to qualify as EAP exempt will increase to \$58,656 (or \$1,128 per week) at the same time.

Phase 3: Adjusted Every Three Years

Finally, the DOL will update the salary thresholds for both EAP employees and HCE's every three years, with the first update taking place on July 1, 2027. Adjustments will be calculated utilizing then-current wage data.

If history is any indicator, the DOL's new rule will likely face legal challenges (which potentially could delay or even block the implementation of the rule). For example, in 2016, a legal challenge successfully blocked the DOL from enforcing a similar rule that raised the same salary thresholds. MSK will provide an update if implementation of the rule is affected by any legal challenges.