

# Increases to Exempt Salary Requirements are Coming – Get Ready!!

## Labor & Employment Law Update

By Kevin Kleine and Sara Zorich on April 24, 2024

On April 23, 2024, the United States Department of Labor (DOL) announced its final rule, amending the minimum salary levels necessary for employees to be considered exempt from the overtime requirements under the Fair Labor Standards Act (FLSA) “White Collar” (executive, administrative, and professional) exemptions. The final rule is set to take effect on July 1, 2024. The current minimum salary level threshold for exempt employees under the FLSA is \$684/week (\$35,568 annually) and \$107,432 minimum compensation for the highly compensated employee. The final rule does not amend the FLSA’s definition and standards related to an employee’s job duties under the “White Collar” exemptions.

The DOL’s final rule establishes the following changes:

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### EFFECTIVE JULY 1, 2024,

- Exempt employees must be paid a salary of at least **\$844/week (\$43,888 annually)**. If employees make less than that amount, they are not exempt from overtime and are eligible to receive overtime for all hours worked in excess of 40 hours per week.
- Total compensation for the FLSA highly compensated exemption increases to \$132,964.

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### EFFECTIVE JANUARY 1, 2025

- The exempt salary threshold amount increases again to **\$1,128/week (\$58,656 annually)**.
- Total compensation for the FLSA highly compensated exemption increases to \$151,164.
- According to the final rule, the DOL will update these minimum salary thresholds every three years (i.e., on July 1, 2027, July 1, 2030, July 1, 2033) to

reflect current earnings data.

**Note**, state law requirements may be more generous than the FLSA and employers must follow the law that is most beneficial to the employee.

It is critical for employers to review their current exempt employee pay mechanisms in light of the FLSA salary increases, and to analyze the following:

- How many of your current employees will be impacted by this salary increase?
- Is a salary increase in July 2024 and January 2025 for those who do not currently meet the salary requirement a plausible financial decision to meet the required increases?
- Are there job positions that should now be reclassified as non-exempt and the employees will now be entitled to overtime if they work over 40 hours?
- Tightening up policies regarding working overtime and working with management to limit the number of overtime hours worked for non-exempt employees.
- Reviewing job descriptions.
- Reviewing handbooks and policies regarding exempt and non-exempt status.
- Reviewing benefits applicable to exempt and non-exempt employees and how a change in status may impact the benefits to your employees.

#### Employers have options:

- Increase the employee's salary to that proposed in the new regulations (July 1, 2024 and then again January 1, 2025) so they continue to meet the exemption;
- Keep the salary the same, reclassify the employee as non-exempt and pay the required overtime payments based on the employee's regular rate of pay;
- Reclassify the employee as non-exempt and reduce the employee's salary or change the employee to hourly at a lower rate so the total earnings do not change after overtime is paid;
- Eliminate the employee working any overtime hours; or
- Some combination of the above options.

It is imperative for employers to analyze their exempt workforce NOW to prepare for the **July 1, 2024 effective date** --- which is only a few months away. Employers should stay calm, gather as much information as they can and formulate a plan before making any drastic or premature decisions. **However, as we witnessed back in November 2016 when the U.S. DOL's rule was enjoined by a federal court, employers should not actually announce or implement any change before July 1, 2024 --- legal challenges are underway and an injunction is possible.**

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