

DOL’s 2024 Final Rule on Overtime – A Feeling of Déjà vu Recommendations for a Comprehensive Compliance Strategy

Déjà vu

On April 23, 2024, the US Department of Labor issued its Final Rule, Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees (“2024 [Final Rule](#)”), which increases the minimum salary threshold for employees to qualify for the commonly-referred to “white collar exemptions” from minimum wage and overtime under the Fair Labor Standards Act (“FLSA”). Some may feel a sense of déjà vu if you recall that the DOL issued a Final Rule in 2016 by the same name. However, in 2016, the DOL was enjoined from implementing the 2016 Final Rule prior to its effective date. Subsequently, in 2019, the DOL raised the salary threshold, effective January 1, 2020, to its current level of \$684/week, equivalent to \$35,568/year (and \$107,432 total annual compensation threshold for highly compensated employees as defined in the Wage and Hour regulations).

Recall that the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as *bona fide* executive, administrative, professional, and outside sales employees and also exempts certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than a minimum salary per week (currently \$648/week). To qualify for an exemption, an employee’s specific job duties and salary must meet the requirements of the regulations, in other words, job titles and salary alone do not determine exempt status.

2024 Final Rule

The 2024 Final Rule increases the threshold salary levels included in the DOL’s test for exempt status from the current \$684/wk. (\$107,432/yr. for highly compensated employees) as follows:

Effective Date	Standard Salary Level*	Highly Compensated
July 1, 2024	\$844/wk. (\$43,888/yr.)	\$132,964/yr., including \$844/wk. paid on a salary or fee basis
Jan. 1, 2025	\$1,128/wk. (\$58,656/yr.)	\$151,164/yr., including at least \$1,128/wk. paid on a salary or fee basis
July 1, 2027, and every 3 yrs. thereafter	To be determined by applying to available data the methodology used to set the salary level in effect at the time of the update	To be determined by applying to available data the methodology used to set the salary level in effect at the time of the update

*Salary levels in U.S. territories remain at \$455/wk. and in American Samoa remain at \$380/wk.

The 2024 Final Rule does not change the duties test contained in the regulations. The 2024 Final Rule's automatic adjustment provision slated for use in 2027 is similar to the 2016 Final Rule but utilizes a methodology different from the 2016 Final Rule. Most likely, if the 2024 Final Rule faces a legal challenge, it will be based, at least in part, on an argument that the DOL must utilize the notice-and-comment procedure in order to increase the threshold rather than prescribe a self-executing formula to determine future increases. Interestingly, the DOL included a severability provision in the 2024 Final Rule, which may allow for the 2024 and 2025 salary thresholds to withstand a legal challenge that takes aim at the automatic adjustment methodology for 2027 and beyond.

What should employers do?

Employers should identify the segment of their workforce that will be affected by the 2024 Final Rule, establish a contingency plan to implement the 2024 Final Rule by July 1, 2024, and monitor legal developments of any challenge to the 2024 Final Rule, which could delay or derail its implementation. Your contingency plan could include increasing salaries where needed to meet the new threshold or designating those employees who will fall below the new threshold as nonexempt and eligible for overtime.

Additionally, if the 2024 Final Rule becomes effective, including its automatic increases to the threshold salaries, employers will need to establish internal procedures to ensure review and compliance with the 2025 salary threshold and the automatic salary threshold increases beginning in 2027.

Equally important, employers should review the DOL's white collar exemptions to assess whether any of their salaried employees, currently designated as exempt, fail to meet the DOL's overtime exemption test based on the employees' duties already outlined in the regulations. Oftentimes, employers focus on the salary threshold without undertaking a detailed analysis of the "duties" test required by the regulations. In anticipation of 2024 Final Rule becoming effective on July 1, 2024, it is advisable that you take the time now to perform a compliance audit to confirm that you are properly classifying employees as exempt based on their job duties.

Finally, employers also should assess whether any of their employees who meet the salary and duties test to qualify as exempt from the DOL's overtime regulations nevertheless are nonexempt under state overtime laws and regulations, which are sometimes more favorable to employees than the FLSA and its regulations. For example, the Pennsylvania Minimum Wage Act does not contain exceptions to minimum wage and overtime for computer employees and highly compensated employees as are found in the federal regulations. To meet the minimum wage and overtime exemption under Pennsylvania law, computer employees and highly compensated employees under federal regulations must qualify as exempt under one of the other white-collar exemptions, *i.e.*, executive, administrative or professional exemptions.

Employers who fail to comply with the 2024 Final Rule, or who treat employees as exempt when they do not qualify under the duties test under either or both federal and applicable state laws and regulations, face substantial liability and overtime obligations. Now is the time to undertake your review, and the Eckert Seamans Labor & Employment team is happy to assist in developing a comprehensive compliance strategy.