

Department of Labor Publishes Final Rule to Update the Salary Level for Overtime Eligibility

By Alex MacDonald, Jim Paretti, and Rob Pritchard on April 23, 2024

The U.S. Department of Labor released a final rule on April 23, 2024, raising the salary threshold to qualify for certain overtime exemptions under federal law. Most importantly, it significantly raises the minimum salary threshold for certain “white collar” workers—executives, professionals, and administrative personnel. If the rule takes effect, employers will need to raise those employees’ salaries or reclassify them as eligible for overtime. But the rule relies on a methodology similar to one that was found invalid in 2016. Litigation is therefore likely, and the rule could still be blocked.

What is the salary-level test?

The FLSA generally requires an employer to pay an employee time-and-a-half (“overtime”) if the employee works more than 40 hours in a week. But the law exempts some employees from that requirement. Exempt employees include administrative, professional, and executive employees. Those employees are often called “white collar” employees.

To qualify for a white-collar exemption, an employee must generally pass three tests: the employee must be paid on a “salary basis”; the employee’s primary duties must be exempt duties; and the employee must earn a minimum salary threshold. This minimum threshold has been increased by the new rule.

What did the Department propose?

Last August, the Department proposed changes to the minimum salary threshold. Today, an employee must earn at least \$684 per week (about \$35,568 per year) to be exempt. That threshold was set in 2019, when the Department pegged it to the 20th percentile in

the lowest-earning Census division (the South). In its August announcement, the Department proposed to raise the threshold to at least \$1,059 per week (about \$55,069 per year). It also proposed to raise separate minimums for certain American territories, motion-picture employees, and a “highly compensated” exemption. (That latter exemption applies to certain highly paid employees who perform at least one exempt duty.)

The Department also proposed to automatically update the threshold going forward. In the past, the Department had updated the threshold only through formal rulemaking. But under the proposal, it would instead look at the available Census salary data every three years and publish a new threshold. That threshold might be delayed in some circumstances, such as an unexpected business downturn or a recession. But otherwise, the new threshold would take effect more or less automatically.

What’s in the final rule?

As expected, the final rule raises the minimum salary. The new salary threshold will take effect in two steps. First, using the old 2019 methodology, the rule will raise the salary threshold to \$43,888 effective July 1, 2024. That marks a 23% increase over the current level. Then, in January 2025, the rule will raise the salary threshold to \$58,656. That increase relies on a new methodology and marks a 64.9% increase. And from there, the rule contemplates automatic updates every three years.

The new methodology pegs the salary threshold at the 35th percentile of full-time non-hourly workers in the lowest-earning Census region (currently, the South). That methodology will be used to update the salary level going forward.

The final rule also, as expected, raises the minimum salary for highly compensated employees (although this exemption is not recognized in every state). That increase will also take effect in two stages. First, on July 1, 2024, the salary threshold will rise from \$107,432 to \$132,964 per year (a 23% increase). Second, on January 1, 2025, it will rise to \$151,164 (a 41% increase from current levels). The new level will be pegged to the 85th percentile of all non-hourly workers nationwide. And like the white-collar thresholds, it will be updated every three years.

Whom does this rule affect?

The rule changes the minimum salary levels under the Fair Labor Standards Act. If an employee already earns more than the new minimums, the rule does not affect the employee's status. Many states already have higher minimums for their own wage-and-hour laws, so employees in those states will likely see little change. Some of those states also recognize fewer exemptions. For example, some have no "highly compensated" exemption. So employees in those states will not be affected by that exemption's new threshold.

What happens next?

Because the final rule is considered a "major rule," it cannot take effect for 60 days. Thus, the Department announced a July 1 effective date. But before then, several things could derail it. Past updates have been challenged in court, and similar challenges could be filed here. Those challenges could rely on similarities between the rule's new methodology and a methodology found invalid in 2016. Challenges might also rely on an opinion written last year by Justice Brett Kavanaugh, where the Justice suggested that the Department has no authority to set minimum salary thresholds at all.

In the meantime, employers should review their salaries and evaluate their classification policies to determine what is necessary to come into compliance with the new overtime rule, if and when it becomes effective. Employers may need to increase salaries or reclassify currently exempt employees. That decision can be complicated and should be made with the guidance of experienced counsel. It is also worth noting that in 2016, the rule was struck down only days before it was scheduled to become effective, and many employers had already either raised salaries or reclassified employees as non-exempt. Given the likelihood of legal challenge, employers may wish to plan for implementation of the final rule, but hold off on taking decisive action for as long as is practicable.

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