May 20, 2024

Updated: U.S. Department of Labor Increases Exempt Salary Thresholds

UPDATE (7/2/24): On June 28, 2024, in Texas v. U.S. Dep't of Labor, a Texas federal court issued an order staying implementation of the Department of Labor's final rule, but only as it applies to workers employed by the State of Texas. That same day, the court consolidated that case with a similar litigation filed with the court by a group of private businesses and associations, indicating that the court's eventual ruling on the validity of the final rule may have broader applicability than the injunction ordered. A similar challenge was also brought in another Texas federal court by a private employer seeking a nationwide preliminary injunction, though no decision has yet been issued in that matter. In the meantime, as of July 1, 2024, the law went into effect for employers other than the State of Texas.

On April 23, the U.S. Department of Labor adopted a final rule under the Fair Labor Standards Act (FLSA), effective in July, that not only substantially increases the overtime salary thresholds for exempt employees, thereby making millions more Americans entitled to overtime, but also adds a mechanism to automatically update those salary thresholds in the future. The final rule is a significant departure from the current rule and will require employers to assess whether they must reclassify those employees who do not meet the higher salary threshold as nonexempt from overtime or adjust their pay level.

Exemptions Under the FLSA

Unless an exemption applies, the FLSA requires covered employers to pay employees minimum wage and overtime (time and one half their "regular rate") for hours worked in excess of 40 hours per week. Most commonly, those employed in a bona fide executive, administrative or professional capacity are properly classified as exempt if they perform certain duties and are paid on a salary basis that meets certain statutory thresholds. "Highly compensated" employees who meet a relaxed duties requirement may also be exempt.

Changes to the Exempt Salary Thresholds

Under the final rule, the salary threshold for executive, administrative and professional employees will jump from the current level of $684 per week ($35,568 per year) to $844 per week ($43,888 annually) on July 1, and to $1,128 per week ($58,656 annually) on January 1, 2025. Similarly, the annual salary threshold for highly compensated employees will jump from $107,432 annually to $132,964 annually on July 1, and then to $151,164 annually on January 1, 2025. These new salary thresholds are even higher than those proposed by the Department of Labor in its August 2023 Notice of Proposed Rulemaking. The final rule does not change the requirements for other exemptions under the FLSA.

Automatic Updates to the Exempt Salary Thresholds

Employers can expect the exempt salary thresholds to continue to change in the future since the final rule now includes a mechanism to automatically update the salary thresholds for the executive, administrative, professional and highly compensated exemptions every three years based on then-current earnings data. Specifically, salary thresholds for the executive, administrative and professional exemptions will adjust so that they align with the 35th percentile of weekly earnings of full-time nonhourly workers in the lowest-wage census region and the 85th percentile of full-time nonhourly

workers nationally for the highly compensated employee exemption. The first automatic increase to the exempt salary thresholds will occur on July 1, 2027.

What's Next?

Although the July 1 implementation date of the Department of Labor's final rule will likely be delayed by a legal challenge to the rule, employers should nonetheless assess the salaries and work hours of their exempt employees to determine whether, if the final rule does go into effect, those whose salaries no longer meet the required salary thresholds should be reclassified as nonexempt or given pay increases.

Authors



Heather Weine Brochin
Partner

Parsippany, NJ | (973) 966-8199

New York, NY | (212)-297-5800

hbrochin@daypitney.com



Glenn W. Dowd
Partner

Hartford, CT | (860) 275-0570

gwdowd@daypitney.com



Francine Esposito
Partner

Parsippany, NJ | (973) 966-8275

fesposito@daypitney.com



Rachel A. Gonzalez
Partner

Parsippany, NJ | (973) 966-8201

New York, NY | (212) 297-5800

rgonzalez@daypitney.com



Theresa A. Kelly
Partner

Parsippany, NJ | (973) 966-8168

tkelly@daypitney.com



James M. Leva
Partner

Parsippany, NJ | (973) 966-8416

Stamford, CT | (973) 966-8416

jleva@daypitney.com



Daniel L. Schwartz
Partner

Stamford, CT | (203) 977-7536

New York, NY | (212) 297-5800

dlschwartz@daypitney.com



Jonathan E. Kohut
Associate

Parsippany, NJ | (973) 966-8116

New York, NY |

jkohut@daypitney.com