

Raising the Rate: DOL Expands Overtime Protections to Millions of Workers

Written By **S. McKinley Gray, III** (smg@wardandsmith.com) and **Avery J. Locklear** (ajlocklear@wardandsmith.com)

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On April 23, 2024, the U.S. Department of Labor ('DOL') announced a final rule that will increase the Fair Labor Standards Act's ('FLSA') minimum salary threshold for overtime exemptions (the '2024 Rule').

Starting July 1, 2024, employers should be prepared to either reclassify or give raises to certain employees.

The DOL published a proposed rule on September 8, 2023 (the "2023 Proposed Rule"). The 2023 Proposed Rule suggested an increase in the salary threshold before considering certain employees exempt from FLSA's overtime and minimum wage requirements. However, the 2024 Rule's new salary threshold is higher than what was initially proposed. Soon, millions of additional workers will be eligible for overtime pay—which means monumental changes for employers.

Employees in an Executive, Administrative, and Professional Capacity

The FLSA exempts bona fide executive, administrative, professional, and computer employees from minimum wage and overtime requirements. This exemption is commonly known as the "white-collar" or executive, administrative, or professional exemption (the "EAP Exemption"). To qualify for the EAP Exemption, an employee must meet certain tests regarding their job duties and be paid a salary not less than the minimum salary threshold amount. Currently, the salary threshold is \$684 per week (\$35,568 annually), but the 2024 Rule will practically double that number by 2025.

Beginning on **July 1, 2024**, the 2024 Rule will increase the EAP Exemption salary threshold to \$844 per week (\$43,888 annually). Then, on **January 1, 2025**, the EAP Exemption threshold will increase to \$1,128 per week (\$58,656 annually). The 2024 Rule's goal is to set effective earnings thresholds that help "define and delimit" the FLSA's EAP Exemption and to update salaries based on current wage standards. The outside sales exemption will not be impacted since there is not a preliminary salary threshold.

Highly Compensated Employees

In addition to the EAP Exemption, the FLSA contains a special rule for "highly compensated" employees

("Highly Compensated Exemption") making these individuals exempt from overtime and minimum wage requirements. To qualify for the Highly Compensated Exemption, an employee must perform at least one of the duties of an exempt executive, administrative, or professional employee and be paid an annual salary not less than the minimum salary threshold amount.

Beginning on **July 1, 2024**, the 2024 Rule will increase the Highly Compensated Exemption annual salary threshold from \$107,432 per year to \$132,964 per year. Then, on **January 1, 2025**, the Highly Compensated Exemption threshold will increase to \$151,164 per year.

Periodic Increases

While the 2024 Rule will impact employers beginning this year, the 2024 Rule is designed to have lasting effects. Starting **July 1, 2027**, the salary threshold for the EAP Exemption and Highly Compensated Exemption will be **automatically updated** every three years. The DOL anticipates that the automatic updates will prevent future erosions of overtime protections and provide greater predictability among employers. However, such updates may be delayed if the DOL decides to engage in rulemaking to change its methodology or mechanism as it applies to the automatic increases.

Considerations for Employers

The 2024 Rule is projected to impact at least four million workers by January 2025. Employers should brace themselves for these changes and prepare to either provide employees with raises or reclassify the employees as non-exempt. Failure to adhere to this new rule can expose employer to significant liability, including unpaid overtime and the costs associated with navigating a DOL investigation and/or wage and hour lawsuit.

While the 2024 Rule is set to take effect in less than three months, it is still susceptible to legal challenges. We expect that various groups will oppose the 2024 Rule. For instance, when the DOL proposed to raise the salary threshold to over \$900 in 2016, various legal challenges were brought to derail the proposal. One attack stuck as a federal judge blocked the proposed increase merely days before it was set to take effect.

Despite looming legal challenges, employers cannot trust that such challenges will be successful this time around. This means that employers will need to quickly decide whether to raise impacted employees' salaries or convert the employees to non-exempt status prior to July 1. To make this determination, employers should speak with experienced legal counsel. Various considerations, such as additional costs, methods of overtime calculation and timekeeping, and the impact of employee benefits, should be considered prior to any change taking place. Regardless of what path an employer takes, all employers should be prepared to notify their workforce about the specific change to their compensation, benefits, and responsibilities.

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