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DOL Raises Minimum Salary Thresholds for Overtime Exemptions

Employers may need to raise exempt employee salaries or reclassify them as non-exempt if the new salary thresholds go into effect.

On April 23, 2024, the Department of Labor (DOL) issued a new rule (the DOL Rule) that will significantly raise the minimum salary thresholds for employees covered by certain overtime exemptions under the Fair Labor Standards Act (FLSA). The minimum salary thresholds are set to increase in phases — on July 1, 2024, January 1, 2025, and July 1, 2027 — with automatic increases every three years thereafter.

Employers will need to either raise the salaries paid to exempt employees earning salaries below the applicable thresholds to maintain their overtime exemptions or reclassify these employees as non-exempt and pay overtime if overtime hours are worked. The DOL estimates that about four million employees will lose their exempt status under the DOL Rule, absent salary increases.

Background

Under the FLSA, covered employers are generally required to pay employees at least the federal minimum wage and, for employees who work more than 40 hours in a workweek, overtime pay of at least 1.5 times their regular rate of pay, unless the employees fall within certain overtime exemptions.

The DOL Rule affects employees considered exempt under the executive, administrative, professional, computer, and highly compensated employee overtime exemptions. For one of these exemptions to apply, an employee must have the qualifying job duties described in the exemption and meet certain minimum compensation requirements.

Specifically, the executive exemption requires employees be paid at least $684 per week ($35,568 per year) on a salary basis, the administrative and professional exemptions require employees be paid at least $684 per week on a salary or fee basis, and the computer employee exemption requires employees be paid at least $684 per week on a salary or fee basis or at least a set minimum hourly rate for all hours worked. For the highly compensated employee exemption, the FLSA currently requires total annual compensation of at least $107,432, of which at least $684 per week must be paid on a salary or fee basis. Note that some states, such as California, Colorado, New York, and Washington, impose their own higher minimum compensation thresholds, and some states do not recognize the highly compensated employee exemption.

New Minimum Salary Thresholds

Under the DOL Rule, effective July 1, 2024, the new FLSA minimum salary thresholds are:

- $844 per week, which annualizes to $43,888 per year, for the executive, administrative, professional, and computer employee exemptions; and
- $132,964 annual compensation for the highly compensated employee exemption, of which at least $844 per week must be paid on a salary or fee basis.

Effective January 1, 2025, the new FLSA minimum salary thresholds are:

- $1,128 per week, which annualizes to $58,656 per year, for the executive, administrative, professional, and computer employee exemptions; and
- $151,164 annual compensation for the highly compensated employee exemption, of which at least $1,128 per week must be paid on a salary or fee basis.

The DOL set the January 1, 2025 threshold for the executive, administrative, professional, and computer employee exemptions at the 35th percentile of weekly earnings for full-time non-hourly workers in the lowest-wage US Census Region. The January 1, 2025 threshold for the highly compensated employee exemption is set at the 85th percentile of annualized earnings for all non-hourly workers nationwide. Beginning July 1, 2027, and every three years thereafter, the salary thresholds will automatically update using these same methodologies.

The DOL Rule does not modify the minimum salary thresholds for employees who are in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, the US Virgin Islands, or American Samoa, are not employed by the federal government, and are classified as exempt under the executive, administrative, professional, or computer employee exemptions. The FLSA minimum salary thresholds for such employees are lower than the FLSA minimum salary threshold mentioned above and are not increasing under the DOL Rule.

Next Steps for Employers

The DOL Rule will likely face legal challenges, as did the DOL's final rule in 2016 that sought to raise the minimum salary thresholds, which could invalidate the DOL Rule or delay its implementation. However, given the quickly approaching deadline, employers are advised to plan for implementation while waiting to take definitive action until closer to the effective date.

Specifically, we recommend that employers begin auditing exempt employees' salaries now to determine whether, without further action, any employees could lose their FLSA exemption if and when the DOL Rule becomes effective. Depending on the results of such an audit, employers may need to increase employee salaries or reclassify employees as non-exempt. Employers may also wish to take this opportunity to conduct a more comprehensive review of their exempt positions, including ensuring their exempt employees' job duties qualify for an exemption. Given the complexity of such determinations, employers are advised to consult with their Latham employment lawyer or other experienced employment counsel when undertaking any such review.

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