

Overview of the FLSA & Overtime Regulations

Fair Labor Standards Act (FLSA)

- Establishes federal minimum wage and overtime pay standards
- Employer must track employees' hours and pay premium "overtime rate" of 1.5 times the employees' regular pay rate for hours worked over 40 per workweek
- FLSA contains various exemptions to overtime pay requirements, including for executive, administrative and professional employees – known as the EAP or "white collar" exemptions
- The FLSA states the Department of Labor will define and delimit by regulation the terms executive, administrative and professional employees from time to time
- The FLSA sets a federal "floor" and states and localities may impose additional wage and hour requirements
- This includes setting more stringent requirements for overtime pay exemptions

Federal Overtime Pay Regulations

Three part test for EAP exemption

1. Duties test
2. Salary basis test
3. Minimum salary level

2024 Final Rule

Increases to Minimum Salary Threshold

Current minimum salary threshold: \$684 per week (\$35,568 per year)

Beginning July 1, 2024: minimum salary threshold is \$844 per week (\$43,888 per year)

Beginning January 1, 2025: minimum salary threshold is \$1,128 per week (\$58,656 per year)

- Over a 60% increase from current level to new level effective January 1

Highly Compensated Employees

- Increases the highly compensated employee (HCE) salary threshold to the 85th percentile of weekly earnings for full-time salaried workers
- Set to \$132,964 per year starting July 1, 2024
- Set to \$151,164 per year starting January 1, 2025



Automatic Updates

- Implements automatic updates to occur every three years
 - First automatic updates after rule takes effect will be July 1, 2027
 - Automatic updates will be issued in Federal Register at least 150 days before going into effect
 - Reserves right for DOL to temporarily delay automatic update through separate NPRM process

How Will Institutions Respond?

Increase

Increase salaries for positions closest to salary threshold

Reclassify

Reclassify employees from exempt to nonexempt if salary bump is too large

Restructure

Restructure jobs, departments, etc.

Legal Challenges

Legal Challenges to the Final Rule

Lawsuit filed by employer groups to challenge final rule

- Filed May 23

July 1 level more likely than not to withstand legal challenge

- Focus on changes to \$43,888 salary level

Challenges to January 1 level and automatic updates more likely than not to succeed

- Once July 1 changes are made, begin planning for January 1 level, but keep in mind that it may be overturned