

DOL Releases Final Overtime Rule, Making Millions More Workers Eligible for Overtime

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The Department of Labor (DOL) has released its final overtime rule, which increases the annual salary level required for executive, administrative and professional employees to be exempt from overtime pay under the Fair Labor Standards Act (FLSA). Beginning July 1, 2024, the minimum annual salary level for these overtime exemptions increases to \$43,888. Additional minimum salary increases will take effect on January 1, 2025, and updates will be made every three years going forward.

The increase is expected to make 4 million additional workers eligible for overtime protections under the FLSA and impose over \$1 billion of direct costs on employers. Employers will also have the administrative burden of determining how to address employees whose “exempt” status will be affected by the new rule.

Exemption for Executive, Administrative, and Professional (EAP) Employees

Under the FLSA, executive, administrative, and professional (EAP) employees who meet certain requirements are exempt from overtime and minimum wage requirements. To qualify for the EAP exemption, an employee must satisfy three tests:

1. The salary basis test, which requires the employee to be paid a salary, which is defined as a predetermined, fixed amount that is not subject to reduction because of the quality or quantity of work performed;
2. The salary level test, which requires the employee to be paid at least a specified weekly salary amount; and
3. The duties test, which requires the employee to primarily perform executive, administrative, or professional duties, as defined by the FLSA regulations. The new final rule does not make any changes to the duties test.

Certain employees, such as doctors, lawyers, teachers, and outside sales employees, are not subject to either the salary basis or salary level tests. Special earning thresholds apply to other employees, such as academic administrative personnel, computer employees and certain highly compensated employees (“HCEs”).

Increases in Salary Levels for Exempt EAP and Highly Compensated Employees

The final rule provides for increases to the standard salary level according to the following schedule:

Date	Standard Salary Level	HCE Total Annual Compensation Threshold
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Before July 1, 2024	\$684 per week (equivalent to \$35,568 per year)	\$107,432 per year, including at least \$684 per week paid on a salary or fee basis.
July 1, 2024	\$844 per week (equivalent to \$43,888 per year)	\$132,964 per year, including at least \$844 per week paid on a salary or fee basis.
January 1, 2025	\$1,128 per week (equivalent to \$58,656 per year)	\$151,164 per year, including at least \$1,128 per week paid on a salary or fee basis.
July 1, 2027 and every 3 years thereafter	Determined by applying to available data the methodology used to set the salary level in effect at the time of the update	Determined by applying to available data the methodology used to set the salary level in effect at the time of the update.

These increases are due to a change in methodology for determining the salary level. Beginning January 1, 2025, the standard salary level will be set at the 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region (the South). For highly compensated employees, the compensation level will be set at the annualized weekly earnings of the 85th percentile of full-time salaried workers nationally.

Options for Employers

While there may be legal challenges to the final rule, employers should prepare for the changes to take effect on July 1. There are a number of ways that employers can address employees whose salary does not meet the new level, and whose exempt status would be affected by these changes.

To maintain an employee's exempt status, an employer can increase the employee's salary to the new minimum salary level. Alternatively, an employer could keep the employee's salary the same, and pay overtime of one and a half times the employee's regular rate of pay for any overtime hours worked.

Employers can also choose to reduce or eliminate overtime hours altogether, or reduce the employee's base salary to offset any anticipated overtime pay (as long as the employee still earns at least minimum wage). How to treat affected employees will depend on each employee's circumstances, such as their current salary and how often they work overtime.

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