

Department of Labor Increases Overtime Pay Thresholds

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On April 23, 2024, the U.S. Department of Labor (“DOL”) released its Final Rule, significantly raising the minimum salary thresholds for certain overtime exemptions under the Fair Labor Standards Act (“FLSA”). Importantly, the thresholds outlined in the Final Rule are higher than those initially proposed by the DOL in August 2023. As a result, millions of employees are set to become entitled to overtime compensation when the Final Rule takes effect.

Current Thresholds

As explained in our previous client alert, the FLSA requires employers to pay their employees overtime pay (1.5 times the regular rate) for all hours worked over 40 hours per week. However, certain employees are exempt from this requirement, including those that qualify for the White-Collar Employee Exemption (the “WCE Exemption”) or the Highly Compensated Employee Exemption (the “HCE Exemption”).

To currently qualify for the WCE Exemption, an employee must (1) be paid on a salary basis and earn at least \$684 per week and (2) perform certain executive, administrative, or professional duties as defined by DOL decisions and guidance. Similarly, an employee qualifies for the HCE Exemption if she (1) earns at least \$107,432 per year and (2) performs one or more executive, administrative, or professional duties identified in the FLSA and accompanying regulations.

Updated Thresholds

As summarized in the chart below, the Final Rule increases the salary thresholds needed to qualify for the WCE Exemption and the HCE Exemption:

Effective Date	WCE Exemption	HCE Exemption
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	To be determined by applying to available data the methodology used to set the salary level in effect at the time of the update	To be determined by applying to available data the methodology used to set the salary level in effect at the time of the update

Next Steps for Employers

Although the Final Rule will likely face legal challenges in the coming months, employers should nevertheless develop a plan to address the anticipated increases if they are not enjoined (i.e., halted by a court). As you will recall in 2016, the DOL proposed large increases to the salary levels for the WCE

Exemption and the HCE Exemption that were set to take effect on December 1, 2016. In November 2016, however, a court entered an injunction preventing these increases from taking effect. The employers who preemptively implemented salary changes anticipating the increases were often, as a practical matter, unable to rescind their actions by telling their employees that the promised changes would no longer be honored. To avoid a similar situation, employers should be prepared to implement these new salary levels but wait to actually implement them until it becomes necessary. Also, it is possible that a court might find that the increases scheduled for July 1, 2024, are lawful but the later-scheduled increases are beyond the DOL's authority.

Employers should evaluate which of their employees are currently earning below the thresholds described above. Moreover, employers should determine whether it would be more cost-effective to increase an employee's salary to meet the minimum threshold or convert the employee to non-exempt hourly and begin paying the employee overtime compensation for all hours worked in excess of 40 per week, especially in light of the scheduled increases set for January 1, 2025.

In making these determinations, employers should consider a variety of factors, including state wage and hour laws and regulations and the costs associated with implementing procedures to track and record employees' hours. Employers should also be mindful of the fact that some employees like the prestige/professional status associated with being exempt and not having to track their hours.

The Seigfreid Bingham team will continue to monitor the latest developments and legal requirements in this area of law and are prepared to assist you in planning how to deal with this very significant change to the thresholds described above. If you have any questions concerning the Department of Labor's Final Rule, please do not hesitate to contact the firm's Employment Law attorneys for further information concerning compliance for your specific situation.

This article is general in nature and does not constitute legal advice. If you have legal questions, please consult the authors, Cody Weyhofen (CWeyhofen@sb-kc.com) 816.265.4163 and John Vering (jvering@sb-kc.com) 816.265.4109, or any of the other attorneys in Seigfreid Bingham's Employment Law Group, including Mark Opara (mopara@sb-kc.com) 816.265.4140, John Neyens (johnn@sb-kc.com) 816.265.4152, Shannon Cohorst Johnson (sjohnson@sb-kc.com) 816.265.4139, Brenda Hamilton (bhamilton@sb-kc.com) 816.265.4103, Julie Parisi (jparisi@sb-kc.com) 816.265.4159, Christopher Tillery (ctillery@sb-kc.com) 816.265.4157, Katie Conklin (KConklin@sb-kc.com), or your regular contact at Seigfreid Bingham at 816.421.4460.