



## RECENT UPDATES TO THE SALARY THRESHOLD UNDER THE FAIR LABOR STANDARDS ACT

July 22, 2024

**On April 23, the U.S. Department of Labor (DOL) under the Biden Administration finalized a new rule regarding the salary threshold for the classification of salaried executive, administrative or professional (EAP) employees as exempt under the Fair Labor Standards Act (FLSA). This new rule has material implications for the way employers classify their employees for purposes of exemption from the FLSA's overtime requirements.**

### **The New Rule**

Classifying employees as exempt under the EAP exemption requires: (1) that the employee is paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed; (2) that the amount of salary paid meets a minimum specified amount (increased by the recent rule); and (3) the employee's job duties must primarily involve executive, administrative or professional duties as defined by the regulations to the FLSA.

Despite some legal challenges, the new rule went into effect on July 1 – on that date, the salary threshold for employees who are exempt from the overtime requirements of the FLSA under an EAP exemption increased to \$844 per week, or \$43,888 annually. On Jan. 1, 2025, it will again increase to \$1,128 per week, or \$58,656 annually. The new rule also changed the salary threshold for the exemption for “highly compensated” employees to \$132,964 per year as of July 1, and will increase to \$151,164 per year on Jan. 1, 2025. Both salary threshold increases also have automatic updating mechanisms, which will result in further increases on July 1, 2027, and again every three years thereafter. Employers who fail to pay the minimum salary required by the new rules will jeopardize the employees' exempt status.

### **Legal Challenges**

The new rule is currently being challenged by several lawsuits filed in federal court. In one suit filed on June 3, *State of Texas v. U.S. Dep't of Labor*, the Texas Attorney General sought a temporary restraining order, requesting that the court stop the rule from being implemented, or alternatively to stop the DOL from enforcing it. The court in that case also consolidated the *State of Texas* case with similar litigation which was filed by private businesses. On June 28, the court granted part of that request, but only as to the State of Texas as an employer. Accordingly, on July 1, the rule went into effect for all public and private employers in the country, except for the State of Texas itself as an employer.

Another case that might affect the DOL's new rule is *Flint Avenue, LLC v. U.S. Dep't of Labor* – there, the Northern District of Texas recently denied the petitioners' request for a nationwide injunction on the rule but noted that it would rule on the issue in the summary judgment phase of the case, before the Jan. 1, 2025 increase.

Finally, the Fifth Circuit is set to hear an appeal in *Mayfield v. U.S. Dep't of Labor*, which attacked the DOL's authority to issue a 2019 rule which raised the FLSA salary threshold requirements. Oral argument in that case is set for August 7.

### **Employer Considerations**

Because the legal challenges discussed above could stop the additional salary threshold increases under the DOL's new rule, employers may be wondering what to do to prepare. For now, employers should review the classifications of their employees who are currently classified as exempt from the FLSA's overtime requirements due to their executive, administrative or professional duties or highly compensated status.

Employers should update salaries to meet the change that went into effect July 1 (\$43,888 for EAP exemptions and \$132,964 for the highly compensated exemption). Many employers are taking a "wait-and-see" approach for the January 2025 increases.

A regulation at 29 C.F.R. § 541.602(a)(3)(i) allows employers to make a final catch-up payment during the last pay period of the year (but no later than the next scheduled payday after year-end) to bring their employees up to the salary threshold level. If an employer does not make changes in response to the July 1 increase, they will need to make the catch-up payment at the end of the year unless the final rule is invalidated before Jan. 1, 2025.

## **Related Practices**

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Labor and Employment

## **Practice Area Contact**

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Alana K. Ackels



Dylan T. Hughes