

APRIL 25, 2024 | PUBLICATION

## Client Alert: Mark Your Calendars: Overtime Exemption Salary Thresholds Increasing On July 1, 2024 And Again On January 1, 2025

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On April 23, 2024, the United States Department of Labor (DOL) issued its Final Rule significantly increasing both the standard salary threshold for exempt employees employed in a bona fide executive, administrative, or professional capacity (EAP) and the annual compensation threshold for highly compensated employees (HCE) under the Fair Labor Standards Act (FLSA). The Final Rule, which is expected to expand overtime protections to approximately 4.3 million employees in the first year, will be implemented in two phases, the first of which begins in less than three months on July 1, 2024.

#### Key Changes and Dates and Other Highlights

Effective **July 1, 2024**, the standard salary threshold for exempt employees classified pursuant to the EAP or “white collar” exemptions will increase from \$684 per week (\$35,568 annualized) to **\$844 per week (\$43,888 annualized)**. Similarly, the annual compensation threshold for the HCE exemption will increase from \$107,432 to **\$132,964**.

Effective **January 1, 2025**, the thresholds will increase again. Specifically, the standard salary threshold for exempt employees classified pursuant to the EAP or white collar exemptions will increase to **\$1,128 per week (\$58,656 annualized)**, and the annual compensation threshold for the HCE exemption will increase to **\$151,164**. Although these numbers are higher than those the DOL included in its Notice of Proposed Rulemaking (NPRM) last fall, the figures are consistent with the DOL’s proposal to base the standard salary and HCE annual compensation thresholds on current Census wage earnings data (the 35<sup>th</sup> percentile of weekly earnings of full-time salaried workers in the lowest-wage Census region and annualized weekly earnings of the 85<sup>th</sup> percentile of full-time salaried workers nationwide, respectively).

Updates to the standard salary threshold for the white collar or EAP exemptions and the annual

compensation threshold for the HCE exemption will begin on **July 1, 2027 and continue every three years** thereafter. The updates will be determined by applying the methodology used to set the thresholds in effect at the time to available data.

Notably, the Final Rule does not make any changes to the duties tests of the white collar exemptions or to the ability of employers to use non-discretionary bonuses, incentive payments, and commissions to satisfy up to ten percent of the standard salary threshold for the white collar exemptions. Moreover, the Final Rule does not include any changes to the special salary levels applicable in U.S. territories or to the special base rate for employees in the motion picture industry as originally proposed in the NPRM.

### **How Does This Impact Employers?**

The FLSA generally requires that employees be paid at least the federal minimum wage for all hours worked and receive time and a half the employee's regular rate of pay for all hours worked over forty in a given workweek. However, the statute provides certain exemptions, the most common of which concern bona fide executive, administrative, or professional employees (EAP or "white collar" exemptions) and highly compensated employees. Unlike non-exempt employees, exempt employees, including those that satisfy the white collar and HCE exemptions, are not entitled to overtime compensation for hours worked over forty.

To qualify for one of the white collar exemptions, employees must satisfy certain criteria. Specifically, employees must (i) be paid on a salary basis; (ii) be paid at a rate not less than the weekly salary threshold, which – until July 1, 2024 – is set at \$684; and (iii) perform certain primary duties specific to each exemption. Relatedly, to qualify for the HCE exemption between now and July 1, 2024, an employee must (i) receive total annual compensation of at least \$107,432, which includes at least \$684 per week paid on a salary or fee basis; (ii) have a primary duty that includes performing office or non-manual work; and (iii) customarily and regularly perform at least one of the exempt duties or responsibilities of an exempt EAP employee. Employees who do not satisfy all of the exemption criteria will be entitled to overtime compensation. Consequently, employees who currently earn less than the threshold amounts going into effect pursuant to the Final Rule will need to be reclassified as non-exempt if their earnings are not increased.

### **What's Next?**

If history is any indication, the Final Rule will likely face legal challenges similar to those that plagued the threshold earnings increases proposed by the DOL in 2015 and 2019. As some employers may recall, in 2015 the DOL under the Obama Administration published a rule to raise the standard salary threshold from \$455 per week to \$913 per week and to implement automatic increases. Although the rule was struck down by a federal court before it could go into effect, the DOL under the Trump Administration published a new rule in 2019 that became effective on January 1, 2020. An appeal challenging the DOL's statutory authority to adopt a standard salary threshold in connection with the 2019 rule is currently pending in the Fifth Circuit Court of Appeals.

Unlike the rules proposed in 2015 and 2019, however, the DOL's Final Rule expressly states that each provision of the rule is severable, meaning that if a provision is stayed, enjoined, or invalidated, the remaining provisions of the Final Rule will remain in full force and effect. Accordingly, employers should assume the Final Rule will go into effect on July 1, 2024 as intended and begin preparing for its implementation.

Employers who have not yet done so should immediately identify and analyze their exempt employees to determine who, if anyone, will no longer satisfy the standard salary or total annual compensation threshold after July 1, 2024. Once those impacted employees are identified, employers should work collaboratively

with their trusted counsel to assess their options for addressing the affected workforce. For instance, an employee whose potential overtime earnings would exceed the amount required to increase their salary to comply with the Final Rule would likely be a strong candidate for a raise. Conversely, it may be more cost-effective to reclassify an employee who rarely works overtime. In the event employees need to be reclassified, employers will need to develop a clear and positive communication strategy to minimize any potential negative impact on employee morale and ensure that the reclassified employees are properly trained on relevant policies, such as policies concerning remote work or other off-the-clock work, uninterrupted lunch breaks, prohibitions on unauthorized overtime, etc.

Regardless of whether it goes into effect, the Final Rule serves as a reminder that employers must remain vigilant to ensure continued FLSA compliance. Employers would be wise to audit their exempt workforce, as well as other wage and hour policies and practices, on at least an annual basis to avoid unnecessary and costly litigation due to noncompliance.

### **Shumaker Webinar**

For more information on the DOL's Final Rule and how you can best prepare to comply, please join us for our upcoming webinar, "The DOL's Final Overtime Rule and Practical Next Steps," on May 16, 2024 at 10:00 a.m. To register for the webinar, please contact Linda Onisko.

In the meantime, if you have questions about the Final Rule or any other general wage and hour compliance concerns, please contact Kate Decker at [kdecker@shumaker.com](mailto:kdecker@shumaker.com) or 419.321.1452 or any of Shumaker's other experienced Labor and Employment attorneys.