

The DOL's Final Rule on Overtime Exemptions to Bring Heightened Salary Requirements

The U.S. Department of Labor's (DOL) long-awaited final rule revising the federal Fair Labor Standards Act (FLSA) exemption from minimum wage and overtime pay requirements for executive, administrative and professional (EAP) employees has been issued. Absent a successful challenge to the rule, the minimum pay thresholds for employees categorized as EAP and highly compensated employees will increase, causing employers to pay some currently exempt employees higher salaries, or to reclassify them as nonexempt and eligible for overtime pay.

What are EAP exemptions?

EAP employees are exempt from certain provisions of the FLSA and, therefore, are not covered by minimum wage, overtime and certain recordkeeping requirements. To qualify as exempt, EAP employees must satisfy three requirements:

1. Be paid a salary, meaning they are paid a predetermined and fixed amount that is not subject to reduction because of the variations in the quality or quantity of work performed;
2. Be paid at or above a specified weekly salary level; and
3. Perform primarily executive, administrative or professional duties as set forth in the FLSA.

What will the rule change for EAP exemptions?

The most significant change under the rule are increased pay requirements. Specifically, the rule will increase the standard salary-level threshold on two separate dates and every three years thereafter. First, on **July 1, 2024**, the minimum weekly salary for EAP employees will increase to \$844, equivalent to \$43,888 per year. Next, on **January 1, 2025**, the threshold will increase to \$1,128 per week, equivalent to \$58,656 annually.

After that, the salary thresholds will increase every three years, starting on July 1, 2027.

Furthermore, the thresholds to satisfy the federal highly compensated employee

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exemption test will increase to \$132,964 effective July 1, 2024, and to \$151,164 effective January 1, 2025. Note that employers in Wisconsin are not affected as the highly compensated employee exemption is not recognized in the state.

What should employers do in anticipation of the rule?

It is anticipated that the rule, when it takes effect, will cause *many* employees to fall outside of the EAP exemptions classifying them as nonexempt employees eligible for overtime pay unless they receive salary increases to meet the new thresholds. Employers can factor in that the rule does not take effect until July 1, 2024, and legal challenges to the rule are expected.

In the meantime, employers should review the exempt positions currently on their payroll to determine which may no longer qualify for exemption under the new salary thresholds.

Employers should consider whether pay increases are appropriate for those who will not satisfy the new threshold. For those who will no longer qualify as exempt, employers should review budgets to factor in any new anticipated overtime expenses and train those employees on the business's timekeeping policies already in place to ensure accurate recordkeeping. Any changes to pay or employee classifications need not be implemented until closer to the rule's effective date.

If you have questions about the rule, or how to prepare for it, please [contact a member of the Labor and Employment Practice](#) or your Reinhart attorney.

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