

Locke Lord QuickStudy: You May Have Missed It...the Department of Labor Releases Final Rule on Increase in Salary Threshold for White Collar Exemptions

Locke Lord LLP

WRITTEN BY

J. Michael Rose

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In an October 2023 article, we discussed the United States Department of Labor's ("DOL") proposed new rule that would significantly raise the minimum salary for employees to qualify for the so-called "white-collar exemptions" (administrative, executive, and professional employees, among other classifications) to the overtime requirements of the Fair Labor Standards Act ("FLSA").

While overshadowed by the release of the more publicized Federal Trade Commission's non-compete ban, the DOL's final overtime rule, *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees*, has now been finalized and released as of April 23, 2024. The following is a summary of the new law and our general recommendations for employers. Unless enjoined by the courts, the new rule will go into effect on **July 1, 2024**.

What Does the Final Rule Require?

- The final rule sets the new salary threshold for certain overtime exemptions, specifically exemptions applicable to administrative, executive, professional, and highly compensated employees whose positions can meet certain duties tests.
- The final rule presents two primary changes:
 - increased minimum salary for administrative, executive, and professional employees, as follows:
 - **July 1, 2024**– \$43,888 per year; \$844 per week;
 - **January 1, 2025**– \$58,656 per year; \$1,128 per week;
 - **January 1, 2027**– will be calculated in 2027 and recalculated every 3 years.
 - increased total compensation threshold for highly compensated employees as follows:
 - **July 1, 2024**– \$132,964 per year, including at least \$844 per week paid on a salary or fee basis;
 - **January 1, 2025**– \$151,164 per year, including at least \$1,128 per week paid on a salary or fee basis;
 - **January 1, 2027**– will be calculated in 2027 and recalculated every 3 years.
- As a reminder, for the highly compensated employee exemption to apply, an employee must customarily and regularly perform one or more of the exempt duties from the administrative, executive, or professional exemptions, and the employee's primary duty must include performing office or non-manual work.
- Notably, the types of duties eligible for these white-collar exemptions are not impacted.
- As with the prior white-collar exemptions, the new rule allows nondiscretionary bonuses and commissions to

satisfy up to 10% of the standard salary level.

What Should We Do Now?

- As with the FTC's final rule on prohibiting non-compete agreements, this final rule is expected to be challenged in the courts by private industry and trade groups.
- However, now is a good time to examine whether you have employees whose salaries exceeded the prior minimum threshold but fall under the new threshold(s).
- Although this new rule does not alter the duties tests for these white-collar and related exemptions, it's always a good idea to critically examine whether the employees you are currently classifying as exempt truly meet these duties and ensure that your job descriptions are accurate and consistent with these duties.
- As a reminder, the white-collar exemptions create an exemption to the FLSA, such that the statute's minimum wage and overtime requirements do not apply to properly exempted employees. Similarly, there are other exemptions (i.e., the Motor Carrier Act exemption for certain truck drivers and related positions, the Jones Act exemption for certain type of sailors, etc.) that will also not be impacted by this new rule.
- Employers should also consider the relevant state and municipal wage and hour laws for locations in which their employees work or reside, which may include requirements that go beyond what is required under the FLSA.

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