

Pay Bump: The Department of Labor Releases Final Rule Increasing Minimum Salary Threshold for White Collar Exemptions

Labor & Employment Workforce Watch

WRITTEN BY

[J. Michael Rose](#)

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In a development somewhat overshadowed by the release of the more-publicized Federal Trade Commission's recent [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. This law will 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").

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 next month 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.
- [The types of duties eligible for these white-collar exemptions](#) are not changed by this rule and remain as important requirements to be met in addition to the minimum salary amount above.

- 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 Employers Do Now?

- As with the FTC's final rule on prohibiting non-compete agreements, this final rule has also been challenged in the courts by private industry and trade groups. Employers should wait before increasing salaries until they know if these legal challenges will stop this increase from going into effect.
- In May, more than a dozen businesses and trade groups (including the American Hotel and Lodging Associations, the Associated Builders and Contractors, and the National Retail Federation) filed a lawsuit in the Eastern District of Texas, asserting that the DOL exceeded its authority under the FLSA in implementing the new rule and violated the Administrative Procedure Act.
- Despite the legal challenges, 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.
- Now is also a good time for employers to check their payroll policies and procedures in general. As a reminder, this minimum salary must be free from deductions. Employers should also have a policy in place for how to handle mistaken deductions.
- To the extent employers will have employees that become non-exempt under the new rule, those employees will require training on timekeeping policies and procedures, so now is a good time to update those policies and procedures as well.
- 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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