



# Department of Labor's Final Rule Dramatically Expands the Pool of Employees Eligible for Overtime with Initial Round of Changes Effective on July 1, 2024

Client Advisories

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On April 23, 2024, the Department of Labor ("DOL") announced long-awaited **revisions to overtime regulations** under the Fair Labor Standards Act ("FLSA"). The most important change will allow many more workers to receive overtime pay because the DOL raised the minimum salary that employees must receive before they can ever be exempt from overtime under the recognized "white collar" exemptions for executives, professionals, and administrative employees. The DOL also finalized its proposed changes to the separate highly compensated employee exemption's total annual compensation requirement methodologies. The revised earning thresholds will become effective on July 1, 2024, and will increase again, significantly, on January 1, 2025.

As a reminder, the FLSA is the federal law which mandates, in part, that most employees will receive overtime pay for hours worked in excess of 40 hours each week. However, categories of employees are "exempt" employees, i.e., exempt from the FLSA's overtime requirements, such as those who meet a white-collar exemption or the highly compensated employee exemption. Although the actual duties of the employee are most often the critical consideration in deciding if an employee is truly "exempt," duties alone are not determinative with respect to the white-collar exemption. In addition to the "duties" test, in order to be considered an "exempt" employee, the employee must also meet two (2) additional tests: the "salary-basis" test; and the "salary-level" test. The DOL's final rule focuses on the "salary-level" test for the white-collar exemptions. In addition, the rule also increases the threshold for the "highly compensated employee" test, in which an employee meeting a specific higher salary threshold will be considered exempt despite only meeting a lower duties threshold.

The DOL explained that the new threshold to satisfy the salary level test is set at the standard salary level of the 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region and the highly compensated employee's annual compensation requirement is set to the annualized equivalent of the 85th percentile of weekly earnings of full-time salaried workers nationally.

The key revisions of the final rule include:

- **First Increased Threshold for Salary Level Test Effective July 1, 2024:** In order to satisfy the “salary level test” between July 1, 2024 through December 31, 2024, the minimum weekly salary paid to an employee is increasing from the current \$684 per week (equivalent to \$35,568 per year) to **\$844 per week (equivalent to \$43,888 per year)**.
- **Second Increased Threshold for Salary Level Test Effective January 1, 2025:** In order to satisfy the “salary level test” beginning on January 1, 2025, the minimum weekly salary paid to the employee will increase again from **\$844 per week (equivalent to \$43,888 per year)** to **\$1,128 per week (equivalent to \$58,656 per year)**.
- **First Increased Threshold for Highly Compensated Employee Exemption Effective July 1, 2024:** In order to meet the exemption for highly compensated employees, the minimum annual payment to an employee is increasing from **\$107,432 per year (including at least \$684 per week paid on a salary or fee basis)** to **\$132,964 per year (including at least \$844 per week paid on a salary or fee basis)**.
- **Second Increased Threshold for Highly Compensated Employee Exemption Effective January 1, 2025:** In order to meet the exemption for highly compensated employees beginning on January 1, 2025, the minimum annual payment to an employee will increase again from **\$132,964 per year (including at least \$844 per week paid on a salary or fee basis)** to **\$151,164 per year (including at least \$1,128 per week paid on a salary or fee basis)**.
- **Automatic Updating Mechanism:** The earnings thresholds to satisfy the “salary level test” will each be updated to reflect current wage data every three years, with the next update scheduled to occur on July 1, 2027.

With these significant increases, employers will have to act quickly and begin immediately evaluating their workforce to determine whether any employees currently classified as exempt will need to be reclassified as non-exempt, or, in the alternative, increase the applicable salaries to meet the rising threshold. In doing so, employers should engage in a cost-benefit analysis to determine which option is more financially economical, i.e., raising an employee's salary to exceed the newly defined thresholds or deciding instead to accurately track the employee's hours and pay the employee overtime for hours worked over forty (40) in a work week.

Employers should be aware that the DOL, at both the federal and state levels, are increasingly and aggressively enforcing wage and hour laws. Through its final rule, the DOL explained it was updating the compensation thresholds to account for earnings growth since the last update in 2019, but also in an attempt “to fully restore the salary level's screening function.” Additionally, the DOL is providing only enough notice to satisfy the



required minimum of 60 days' notice mandated for major rule changes, whereas previous rule changes in 2004, 2016, and 2019 were not scheduled to take effect until periods ranging between 90 and 180 days. This shortened notice further evidences the urgent pressure placed on employers by the DOL to ensure compliance quickly.

While the final rule may still face challenges in court, there is limited time to spare and it is a crucial time for employers to:

- Consider requiring employees – especially those in the “gray” area of exemption – to maintain time records. Employers may wish to start tracking employee hours between now and July 1, 2024 to determine which is the most cost-effective route for addressing employees falling below the new thresholds (i.e., a raise or overtime payments).
- Ensure that employees categorized as exempt are properly exempt (including under the duties test, which is still in full effect and must be met in order to qualify for exempt status).
- Plan ahead and implement periodic reviews as employers will have to reevaluate their employees' status as exempt every three years, at a minimum.

Employers in New Jersey must be aware that the New Jersey overtime exemptions are tied to, and as a result, automatically change to reflect the changed FLSA regulations. This means that an employee who is misclassified exempt under the FLSA due to the new regulations will also be misclassified as exempt under the New Jersey Minimum Wage and Overtime Law.

FLSA misclassifications will result in substantial damages, including attorneys' fees and other penalties. New Jersey imposes even greater damages and penalties for misclassifications – for example, liquidated damages of 200 percent, amounting to three times the overtime due.

If you have any questions about whether or not your employees are exempt under applicable federal or state laws, please contact [Meghan Hitch](mailto:mhitch@archerlaw.com) at 856-354-3060 or [mhitch@archerlaw.com](mailto:mhitch@archerlaw.com), [David Rapuano](mailto:drapuano@archerlaw.com) at 856-616-2603 or [drapuano@archerlaw.com](mailto:drapuano@archerlaw.com), or any member of Archer's **Labor & Employment Group** in Voorhees at 856-795-2121, Hackensack at 201-342-6000, Philadelphia at 215-963-3300, or Wilmington at 302-777-4350.

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