

# HR COMPLIANCE BULLETIN



## Answers to Frequently Asked Questions About the DOL's Final Overtime Rule

On April 23, 2024, the U.S. Department of Labor (DOL) [announced](#) a [final rule](#) to amend current requirements employees in white-collar occupations must satisfy to qualify for an overtime exemption under the Fair Labor Standards Act (FLSA). The FLSA white-collar exemptions apply to individuals in executive, administrative, professional (EAP), and some outside sales and computer-related occupations. Some highly compensated employees (HCEs) may also qualify for the FLSA white-collar overtime exemption. To qualify for this exemption, white-collar employees must satisfy the standard salary level test, among other criteria. This salary level is a wage threshold that white-collar employees must receive to qualify for the exemption.

Starting July 1, 2024, the DOL's final rule increases the standard salary level from:

- \$684 to \$844 per week (\$35,568 to \$43,888 per year); and
- \$107,432 to \$132,964 per year for HCEs.

On Jan. 1, 2025, the standard salary level will then increase from:

- \$844 to \$1,128 per week (\$43,888 to \$58,656 per year); and
- \$132,964 to \$151,164 per year for HCEs.

### Action Steps

Employers should become familiar with the final rule and evaluate what changes they may need to adopt to comply with the rule's requirements.

### Highlights

- ✓ The salary level for the EAP exemptions will increase to \$844 per week (\$43,888 per year) on July 1, 2024, and then to \$1,128 (\$58,656 per year) on Jan. 1, 2024.
- ✓ The salary level for HCEs will increase to \$132,964 annually on July 1, 2024, and then to \$151,164 annually on Jan. 1, 2025.
- ✓ The final rule does not impact the duties test for the white-collar FLSA exemptions.
- ✓ The rule allows the DOL to update salary levels automatically every three years starting on July 1, 2027.

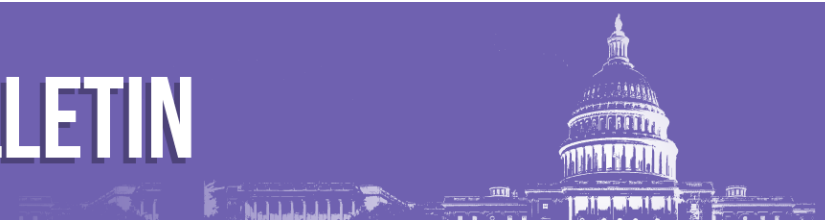
### Important Dates

#### July 1, 2024

The standard salary level for white-collar employees will increase to \$844 per week and \$132,964 per year for HCEs.

#### Jan. 1, 2025

The standard salary level for white-collar employees will increase to \$1,128 per week and \$151,164 per year for HCEs.



## OVERVIEW

### 1. What is the DOL doing in this rule?

This rulemaking updates and revises the regulations to determine whether certain salaried employees are exempt from minimum wage and overtime requirements under the FLSA. Employees are exempt if they are employed in a bona fide EAP capacity, as those terms are defined in the DOL's regulations at 29 CFR part 541. This exemption from the FLSA is sometimes referred to as the "white-collar" or "EAP" exemption.

### 2. What is the FLSA's EAP exemption?

The FLSA exempts individuals employed in a "bona fide executive, administrative, or professional capacity" from the act's minimum wage and overtime requirements. The FLSA instructs the DOL to issue regulations that define and delimit the EAP exemption.

### 3. What determines if an employee falls within the EAP exemption?

Currently, to fall within the EAP exemption, an employee generally must:

1. Be paid a salary, meaning that they are paid a predetermined and fixed amount that is not subject to reduction because of variations in the quality or quantity of work performed (the salary basis test);
2. Be paid at least a specified weekly salary level (the salary level test); and
3. Primarily perform EAP duties, as provided in the DOL's regulations (the duties test).

Certain employees, such as doctors, lawyers, teachers and outside sales employees, are not subject to either the salary basis or salary level tests; employees in these occupations may fall within the EAP exemption regardless of how and what they are paid. The DOL's regulations also provide an alternative test for certain HCEs who are paid a salary, earn at least a higher total annual compensation level and satisfy a minimal duties test.

### 4. When did the DOL last revise the exemption regulations for EAP workers?

Prior to the final rule, the DOL last updated the EAP exemption regulations in 2019. That update set the standard salary level test at \$684 per week (equivalent to a \$35,568 annual salary) and set an HCE total annual compensation threshold of \$107,432 per year. These earnings thresholds have been in effect since Jan. 1, 2020.

### 5. Why is the DOL revising the exemption regulations for EAP workers?

The DOL is seeking to keep the earnings thresholds up to date for the benefit of both workers and employers. Over four years have passed since the 2019 rule, during which time salaried workers in the U.S. economy have experienced a rapid growth in their wages, which has decreased the effectiveness of the \$684 per week salary level established in 2019 in helping to define the EAP exemption. In this final rule, the DOL is updating the salary level test to more effectively identify who is employed in a bona fide executive, administrative or professional capacity and ensure that the FLSA's intended overtime protections are fully implemented.

In addition to updating the salary level to account for increased wages, the DOL's rule fully restores the salary level's historic function of screening low-paid employees from the overtime exemption.



## 6. Does the final rule change any of the current duties tests for exemption?

The DOL is not making any changes to existing job duties requirements, consistent with its approach in both the 2016 and 2019 rules. At this time, the DOL favors keeping the current standard duties test, which is well known to employers and employees. As long as it is paired with an appropriate salary level requirement, the standard duties test can appropriately distinguish bona fide EAP employees from nonexempt workers.

## Earnings Thresholds

### 7. What is the DOL changing about the regulations for the EAP exemption?

In the final rule, the DOL is making the following changes:

- On July 1, 2024, the DOL will update the standard salary level using the existing methodology from the 2019 final rule and current data, raising the salary level from \$684 per week to \$844 per week (equivalent to \$43,888 per year). For HCEs, also following the 2019 methodology, the annual compensation level to be exempt from overtime pay will increase from \$107,432 to \$132,964;
- On Jan. 1, 2025, the DOL will implement the new salary methodology, setting the standard salary level at the 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region (the South), resulting in a salary level of \$1,128 per week (equivalent to \$58,656 per year). For HCEs, the compensation level will be set at the annualized weekly earnings of the 85th percentile of full-time salaried workers nationally, resulting in a compensation level of \$151,164; and
- Future updates to the salary and compensation levels will occur every three years and will apply up-to-date wage data to the salary and compensation methodologies in the regulations at the time of the update. The next three-year update will take place on July 1, 2027.

### 8. How did the DOL determine the new standard salary level and HCE total annual compensation threshold?

The initial updates to the standard salary level and HCE threshold that will occur on the rule's effective date, July 1, 2024, are determined by applying to current earnings data the methodologies used to set those thresholds in the DOL's 2019 final rule. Specifically, the \$844 per week standard salary level is equivalent to the 20th percentile of salaried earnings in the lowest-wage Census Region and/or in the retail industry nationally, while the \$132,964 HCE threshold is equivalent to the annualized weekly earnings amount of the 80th percentile of full-time salaried workers. Through its updating mechanism, the DOL will continue to update the standard salary level and HCE threshold every three years using the methodologies in effect at the times of the updates and current data.

The thresholds that will become applicable on Jan. 1, 2025, are the product of new methodologies established by this rulemaking. Specifically, the new \$1,128 per week standard salary level is equivalent to the 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region (the South), while the HCE test's new \$151,164 total annual compensation threshold is equivalent to the 85th percentile of salaried worker earnings nationwide.

### 9. Why is the DOL setting the HCE total annual compensation threshold equivalent to the 85th percentile of salaried worker earnings nationwide?

The DOL believes that this methodology results in an HCE level that is low enough to not unduly restrict the use of the HCE test for employers in low-wage regions and industries and high enough to guard against the unintended exemption of



workers who are not bona fide EAP employees in higher-income regions and industries. Under this methodology, the HCE threshold will cover more salaried workers than the HCE threshold adopted in 2019 (which covered 80% of salaried workers nationwide) but fewer salaried workers than the HCE threshold that was introduced in 2004 (which covered more than 93% of salaried workers nationwide).

## 10. Does the final rule change the special salary levels that apply in U.S. territories?

No. The final rule does not change the special salary levels that currently apply in the U.S. territories. Although the DOL proposed changes to these special salary levels in the 2023 Notice of Proposed Rulemaking (NPRM), the DOL did not finalize these proposed changes and will address the special salary levels for U.S. territories in a future final rule.

## 11. Did the DOL change the special base rate for employees in the motion picture industry?

No. Although the DOL proposed changes to the special base rate for employees in the motion picture industry in the 2023 NPRM, the DOL did not finalize these changes and will address this special base rate in a future final rule.

## 12. When is the final rule effective?

The final rule will take effect on July 1, 2024, but some increases to the EAP earnings thresholds will become applicable on future dates. All of the scheduled increases are displayed in the chart below:

Date	Standard Salary Level	HCE Total Annual Compensation Threshold
Before July 1, 2024	\$684 per week (equivalent to \$35,568 per year)	\$107,432 per year, including at least \$684 per week paid on a salary or fee basis
July 1, 2024	\$844 per week (equivalent to \$43,888 per year)	\$132,964 per year, including at least \$844 per week paid on a salary or fee basis
Jan. 1, 2025	\$1,128 per week (equivalent to \$58,656 per year)	\$151,164 per year, including at least \$1,128 per week paid on a salary or fee basis
July 1, 2027, and every three years thereafter	To be determined by applying to available data the methodology used to set the salary level in effect at the time of the update	To be determined by applying to available data the methodology used to set the salary level in effect at the time of the update

## Updating Mechanism

### 13. Does the final rule address keeping the earnings thresholds up to date?

Yes. The final rule is introducing a mechanism to regularly update the salary and compensation thresholds, including an initial update to reflect earnings growth, which on July 1, 2024, will result in a standard salary level of \$844 per week (\$43,888 annually) and a HCE total annual compensation level of \$132,964, followed by triennial updates in the future that will apply updated earnings data to the methodologies in effect at the time of the updates. Experience has shown that the salary level test is a strong measure of exempt status only when it is up to date. Left unchanged, the test becomes



substantially less effective as wages for overtime-protected workers increase over time. Updating the salary level and HCE total annual compensation requirement using the most recent data will ensure that these tests continue to accurately reflect current economic conditions.

## **14. How will the salary level and HCE total compensation threshold be updated?**

The standard salary level and the HCE total compensation requirement will be updated every three years to reflect current earnings data using the most recently available four quarters of data, as published by U.S. Bureau of Labor Statistics, and using the methodologies in effect at the time of each update.

At least 150 days before the date of a scheduled update to the standard salary level and the HCE total annual compensation requirement, the DOL will publish a notice with the new earnings levels described above in the Federal Register.

## **15. Does the rule include any special exceptions where a scheduled update to the earnings thresholds will not occur?**

The rule includes a provision allowing the DOL to temporarily delay a scheduled update where unforeseen economic or other conditions warrant. This feature affords the DOL added flexibility to adapt to unforeseen circumstances without sacrificing the benefits provided by regularly scheduled updates. The updating mechanism will not alter the DOL's ability to engage in future rulemaking to change the updating mechanism or any other aspect of the Part 541 regulations at any point.

## **Impact**

### **16. What are the estimated costs, benefits and transfers of the rule?**

The DOL estimates that in Year 1, the rule will impose approximately \$1.4 billion in direct costs on employers, including \$451.6 million in regulatory familiarization costs, \$299.1 million in adjustment costs, and \$685.5 million in managerial costs. The DOL estimates that the rule will result in a Year 1 income transfer of approximately \$1.5 billion from employers to workers, predominantly from new overtime premiums or pay raises to maintain the exempt status of some affected employees. Beyond these costs and wage transfers, the rule may reduce the risk of misclassification, increase worker productivity, reduce employee turnover and increase personal time for workers.

### **17. How many employees are impacted by the final rule's threshold increases?**

In the first year, the DOL estimates that 4 million workers exempt under the current regulations who earn at least the current weekly salary level of \$684 but less than \$1,128 will, without some intervening action by their employers, become newly entitled to overtime protection under the FLSA.

Similarly, the DOL estimates that there are 292,900 workers who earn at least \$107,432 per year (the current HCE total annual compensation level) but less than \$151,164 per year and who meet the minimal HCE duties test but not the standard duties test. These workers will, without some intervening action by employers, become eligible for overtime when the HCE total annual compensation level is increased to the new threshold of \$151,164 per year.



## **18. Must salaried employees earning below the new salary level be converted to hourly pay?**

No. Salaried workers earning below the new salary threshold may continue to be paid a salary, as long as that salary is equivalent to a base wage that is at least equal to the minimum wage rate for every hour worked, and the employee receives a 50% premium on that employee's regular rate for any overtime hours each week.

## **19. How will employers respond to the updated thresholds established in this final rule?**

Employers have a range of options for responding to the updated thresholds established in this rule. For each employee who is affected by the increased earnings threshold, an employer may:

- Increase the salary of the employee to at least the new salary level to retain their exempt status;
- Pay an overtime premium of one and a half times the employee's regular rate of pay for any overtime hours worked;
- Reduce or eliminate overtime hours;
- Reduce the amount of pay allocated to the employee's base salary (provided that the employee still earns at least the applicable hourly minimum wage) to offset new overtime pay; or
- Use some combination of these responses.

The circumstances of each affected employee will likely impact how employers respond to this final rule. For example, employers may be more likely to give raises to employees who regularly work overtime and earn slightly below the new standard salary level in order to maintain their exempt status so that the employer does not have to pay the overtime premium. For employees who rarely work overtime hours, employers may simply choose to pay the overtime premium whenever necessary. The DOL accounted for these (and other) possible employer responses in estimating the likely costs, benefits and transfers of the final rule.

## **20. Can an employer still allow an employee who is newly entitled to overtime pay to work from home or enjoy a flexible work schedule?**

Yes. The FLSA does not restrict when or where work may be performed, and there is no requirement that a worker must have a predetermined schedule. See [Fact Sheet 22: Hours Worked Under the Fair Labor Standards Act \(FLSA\)](#). Employers can continue to permit their employees to work flexible hours as long as their total hours each day are accurately recorded.

## **21. Will employees newly entitled to overtime pay have to record their hours on a daily basis or punch a time clock when they start or stop work?**

Employees entitled to overtime pay are not required to punch a time clock. The FLSA requires that employers keep certain records for each nonexempt employee so those workers can be sure that they get paid what they earn and are owed, including time and one-half of their regular rate of pay when they work more than 40 hours in a workweek. Employers have options for accounting for employee's work hours—some of which are very low-cost and low-burden. There is no particular form or order of records required, and employers may choose how to record hours worked for overtime-eligible employees. For example, when an employee works a fixed schedule that rarely varies, the employer may simply keep a record of the employee's regular schedule and then record any variations from that schedule ("exceptions reporting"). See [Fact Sheet 21: Recordkeeping Requirements under the Fair Labor Standards Act \(FLSA\)](#).



The FLSA does not limit the flexibility in scheduling that many employers provide. For an employee with a flexible schedule, an employer must keep an accurate record of the number of hours worked each day and each workweek by the employee, but not the specific start and end times each day.

## **22. Are the FLSA's recordkeeping requirements different for exempt EAP employees?**

Yes. Unlike other employees, employers are not required to keep records related to the daily or weekly work time performed by employees who are exempt EAP employees. However, employers must still keep certain records related to the identity and payment of EAP employees, as described in the DOL's recordkeeping regulations at 29 CFR part 516.

## **FLSA Principles**

### **23. What does the FLSA do?**

The FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards for employees in the private sector and in federal, state and local governments. Covered nonexempt workers are entitled to a federal minimum wage of not less than \$7.25 per hour. Unless specifically exempted, workers are entitled to overtime pay at a rate not less than one and one-half times the regular rate of pay for hours worked in excess of 40 in a workweek.

### **24. Who is covered by the FLSA?**

Generally, employees of enterprises that have an annual gross volume of sales made or business done of \$500,000 or more are covered by the FLSA. In addition, employees of certain businesses are covered by the FLSA regardless of the gross volume of sales or business done. These businesses include hospitals, establishments providing medical or nursing care for residents, schools (whether operated for profit or not for profit), and public agencies. Employees of employers that are not covered by the FLSA on an enterprise basis may still be entitled to its protections if they are individually engaged in interstate commerce.

### **25. Do the FLSA and the DOL's rule apply to state or local government workers?**

Yes, state and local government employers are subject to the FLSA and the DOL's regulations concerning EAP employees.

### **26. Is there a small business exemption from the FLSA or the DOL's rule for EAP workers?**

The FLSA applies to most businesses. Generally, the FLSA and the DOL's implementing regulations apply to employees of enterprises that have an annual gross volume of sales made or business done of \$500,000 or more, as well as certain other businesses. The DOL has provided a small business compliance guide for the new rule.

### **27. Is there an exemption for nonprofit organizations from the FLSA or the DOL's final rule?**

Many nonprofit organizations are covered by the FLSA. The final rule may impact nonprofit organizations that have an annual dollar volume of sales or business done of at least \$500,000. In determining coverage, only activities performed for a business purpose are considered. Charitable, religious, educational or similar activities of organizations operated on a nonprofit basis where such activities are not in substantial competition with other businesses are not considered. Employees of employers that are not covered by the FLSA on an enterprise basis may still be entitled to its protections if they are individually engaged in interstate commerce.



The DOL's EAP regulations have never had special rules for nonprofit or charitable organizations, and employees of these organizations are subject to the EAP exemption if they satisfy the same salary level, salary basis and duties tests as other employees.

## **28. How is overtime pay determined?**

Unless exempt, an employee covered by the FLSA must receive overtime pay for all hours worked over 40 in a workweek at a rate not less than one and one-half times their regular rate of pay. For guidance in determining an employee's "regular rate of pay" when calculating overtime pay, refer to [WHD Fact Sheet #56A](#) or the DOL's regulations at 29 CFR part 778.

## **29. Can employers use bonuses to satisfy the standard salary level or the total annual compensation threshold for HCEs?**

The final rule does not make any changes to the treatment of bonuses. Employers may use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the standard salary test requirement, provided that such payments are paid on an annual or more frequent basis. Such bonuses include, for example, nondiscretionary incentive bonuses tied to productivity or profitability (e.g., a bonus based on the specified percentage of the profits generated by a business in the prior year). Although the amount of nondiscretionary bonuses and incentive payments attributable to the EAP standard salary level is capped at 10% of the required salary amount, employees may receive bonuses beyond this amount. In addition, employers may use nondiscretionary bonuses and incentive payments earned during a 52-week period to satisfy the HCE total annual compensation threshold, but such bonuses and incentive payments cannot be used to satisfy the weekly standard salary level portion of the HCE test.

## **30. I am paid a salary, and my job title is manager. Am I exempt from overtime pay?**

Job titles do not determine EAP exemption status, and the fact that an employee is paid on a salary basis is not alone sufficient to exempt that employee from the FLSA's minimum wage and overtime requirements. For the exemption to apply, an employee's specific job duties and salary must meet all of the applicable requirements provided in the DOL's regulations.

## **31. What if a state has its own laws about who is entitled to overtime pay?**

The FLSA provides minimum standards and does not preempt a state from establishing more protective standards. If a state establishes a more protective standard than the provisions of the FLSA and the DOL's implementing regulations, the higher standard applies in that state. This would include exemption criteria for EAP employees under state law with higher earnings thresholds or more stringent job duties requirements than those provided in the DOL's regulations.

*Source: U.S. Department of Labor – [Frequently Asked Questions](#) for the Final Rule: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees*