The DOL Announced the New Exempt Minimum Salary: Now What Do We Do?

While legal challenges have been requesting an injunction until the question whether the DOL has the right to increase the salary threshold is determined, no such injunction has been issued as of this writing. Therefore, all employers must prepare their response to the new rule which goes into effect July 1, 2024.

In April 2024, the US Department of Labor (DOL) announced its long-anticipated change to the "white-collar" exemptions (Executive, Administrative, and Professional or EAP) and Highly-Compensated exemptions. The changes were published to its website and can be found here.

Increasing the salary requirement reflects the overall growth of wages in general as well as the thinking that an employee with exempt-level responsibilities to be truly exempt should probably be making more than $17.10 per hour.

The DOL estimates that by January 1, 2025, the exemption of four million workers will be impacted unless their employers increase their weekly salary, while another 292,900 workers will be impacted with the increased Highly-Compensated salary.

First, the Basics

The Fair Labor Standards Act (FLSA) is enforced by the Department of Labor (DOL) and dictates several areas of labor law including minimum wage, overtime, compensable time, child labor, and independent contractors. FLSA also requires all employees to be classified as *exempt* or *non-exempt* according to its definitions and tests.

> *Non-exempt employees* must be paid at least minimum wage for all hours worked and time-and-a-half their regular wage rate for all hours worked over 40 in a workweek (defined as a set 7-day period). To ensure proper wage payment, records must be kept of their exact time worked within this 7-day period, although how time is tracked is left to the discretion of the employer. Non-exempt employees can be paid hourly or salary.
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> *Exempt employees* are not required to be paid overtime and do not need to track their exact time worked. While there are many categories, the main ones are Executive, Administrative, Professional, Computer, Outside Sales, and Highly-Compensated. To be classified as exempt, employees must pass three tests:
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> 1. be paid on a salary basis (defined as a wage guarantee) which is not reduced based on time worked or not worked;
> 2. that salary must be no less than the minimum salary threshold (*This is the test under discussion now.)*; and
> 3. meet the job duties test for their applicable category.

As with all labor laws, if an employee's classification is uncertain under these tests, the employee must be classified as "non-exempt" as this is considered the most favorable to them.

New Minimum Salary Threshold
The "good" news – the DOL did not change the job duties test.

The "bad" news – the DOL announced a significant increase to the minimum salary threshold although they softened it by allowing for a two-stage increase. The EAP salary was calculated based on the 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census region. The Highly-Compensated salary was based on the annualized weekly earnings of the 85th percentile of full-time workers nationwide.

The announced minimum salary threshold for EAP and Highly-Compensated exemptions will increase as follows:

Effective Date	EAP Salary (weekly)	EAP Salary (Annualized)	Highly-Compensated Salary (Annual)
Current – June 30, 2024	$ 684	$ 35,568	$ 107,432
July 1, 2024 – December 31, 2024	$ 844	$ 43,888	$ 132,964
January 1, 2025 – June 30, 2027	$ 1,128	$ 58,656	$ 151,164
July 1, 2027 and every 3 years thereafter	The salary basis will be recalculated based on a formula to be announced.		

What to Do Now
All employers need to review their payroll roster to determine which currently-exempt employees will fall below the higher salary threshold and then take one of the below steps for each:

- *Keep those employees exempt:* If you want to ensure the employee stays exempt, you will need to increase their salary to meet the above standards by the effect dates.
  - If the increase is minor, consider making it their annual adjustment.
  - If the increase is significant, consider explaining that this increase encompasses their annual increase for the next two – three years since the next increase will not be required until July 1, 2027.
- *Reclassify those employees to non-exempt:* Given the salary threshold is almost doubling by January 1, 2025, employers may decide that it is best to reclassify these employees as non-exempt to avoid having to pay the higher salary and to reduce misclassification exposure. If you choose this route, advise employees:
  - of their non-exempt status;
  - of their hourly rate or, if still salaried, effective hourly rate (weekly salary divided by the number of hours they will work, usually 40);
  - how to track their exact work time;
  - what is considered compensable time; and

    - that they will be entitled to overtime.

Whatever you choose, notify employees in writing of all changes prior to the effective date.

Challenges
While some employers will absorb the increase with minimal impact, small employers and/or those in the lower-wage industries and/or Census areas (typically the South and Midwest) may find the salary increases difficult to budget for and sustain long-term. These employers may find it best to convert all but the highest-paid employees to non-exempt so they can more easily manage pay rates in line with the markets and trends of their area and/or industry.

Even companies that can manage the increases may then need to deal with resulting wage compression across the rest of their organization so all employees are paid fairly based on factors such as job duties, education, and experience. Wage compression can cause low morale, result in high turnover, and lead to legal challenges. Employers facing wage compression issues could consider:

- initiating an across-the-board rate increase so employees are still paid comparable to their duties, experience, etc.;
- defining that the required increase will cover a longer period (i.e., two years instead of one), adjustable based on the percentage of increase; or
- offering employees impacted by wage compression bonuses, benefits, and/or perks (such as flexible scheduling, professional development reimbursement, or more PTO) to adjust their overall compensation.

Looking to the Future
The Workplace Advisors will continue to monitor this DOL change including clarification and legal decisions as they develop. We are here to answer questions and help you develop a plan to address this change and its impacts in the future.

By Paige McAllister, SPHR, SHRM-SCP, Vice President for Compliance – The Workplace Advisors, Inc.

<u>Links</u>:

DOL site: https://www.dol.gov/agencies/whd/overtime/rulemaking

FLSA: https://www.dol.gov/agencies/whd/flsa

Executive, etc.: https://www.dol.gov/agencies/whd/fact-sheets/17a-overtime

Lowest wage region: https://www.bls.gov/news.release/ecec.t07.htm