

## DOL Announces Final Overtime Rule, Increases Minimum Salary for Exempt Employees

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The U.S. Department of Labor (DOL) announced its long-anticipated final rule raising the salary threshold for overtime exemptions.

Specifically, the DOL raised the minimum salary employers must pay certain "white-collar" employees, including those in executive, administrative, and professional roles,<sup>[1]</sup> in order for such employees to be exempt from overtime. The DOL increased the minimum salary threshold according to the following process:

- Beginning July 1, 2024, employees must be paid on a salary basis of not less than \$844 per week (\$43,888.00 per year) to be exempt from overtime pay.
- Beginning January 1, 2025, employees must be paid on a salary basis of not less than \$1,128 per week (\$58,656 per year) to be exempt from overtime pay.
- Beginning July 1, 2027, and every three years thereafter, the DOL will update the salary basis threshold to reflect current earnings data obtained from the Bureau of Labor Statistics. The DOL is required to give notice at least 150 days in advance of the effective date of the updated salary basis threshold.

The rule does not change the existing "duties test" for the exemption, and employer are encouraged to use this new rule as an opportunity to evaluate both compensation and job duties to determine whether employees are – and will be as of July 1, 2024 – properly classified as exempt from overtime.

As of July 1, 2024, and again on July 1, 2025, employees who otherwise satisfy the duties test but who are not paid on a salary basis at the new minimum level must be classified as "non-exempt." Generally, non-exempt employees must be paid overtime at the rate of one and one-half (1½) times their regular rate of pay for all hours worked in excess of forty (40) hours in a work week.

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In addition, under the new rule:

- When determining whether an employee's pay meets the minimum salary basis threshold, employers are permitted to count nondiscretionary bonus, incentive and commission payments paid to employees, up to 10% of the threshold, so long as those bonus, incentive, and commission payments are paid annually or more frequently. For example, if an employee receives an annual salary of \$55,000 and receives a nondiscretionary bonus of at least \$1,000 per quarter, the employee's total pay (\$59,000) means that the employee will remain exempt from overtime, at least until July 1, 2027.
- The total annual compensation requirement for the exemption of certain "highly compensated employees" has been increased to \$132,964 per year as of July 1, 2024, and \$151,164 per year as of January 1, 2025, and will change again with each triannual update.

Employers will need to adjust to the requirements of the new rule no later than the rule's July 1, 2024 effective date. Employers may decide to increase the salaries of some or all of their current exempt employees in order to meet the new salary basis threshold. Alternatively, employers may decide to reclassify exempt employees who are paid below the new salary basis threshold to non-exempt status and to pay overtime at the applicable rate when those reclassified non-exempt employees work more than 40 hours in a work week.

Employers continue to have an affirmative legal duty to maintain accurate time records for all non-exempt employees, including any employees who are reclassified as non-exempt as a result of the new rule.

As noted above, employers are encouraged to use the new rule as an opportunity to initiate an assessment of job roles and compensation. Employers need to determine whether to reclassify affected exempt employees as non-exempt or to raise salaries to meet the new salary basis threshold. Employers also need to confirm that exempt employees meet the "duties test" regardless of whether the new rule affects their compensation. Classification and compensation analyses come with multiple legal considerations. The Lowndes employment law team stands ready to assist with your organization's comprehensive overview.

Lowndes will continue to monitor the situation for new developments, including legal challenges over the new rule. If you are concerned about how this new rule impacts your business, please reach out to Rachel Gebaide or Jyllian Bradshaw to discuss how our employment law team can best address these issues for your business.

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[1] The rule does not affect compensation paid to employees engaged as teachers, doctors, and lawyers, who are not required to be paid on a salary basis.