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DOL Issues Final Rule Increasing Salary Thresholds for Exempt Employees Under FLSA

On April 23, 2024, the United States Department of Labor (DOL) released a final rule that increased the salary thresholds for the executive, administrative, professional, and highly compensated employees exemptions under the Fair Labor Standards Act (FLSA). The final rule, "Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees," went into effect on July 1, 2024.

The FLSA requires covered employers to pay employees a minimum wage and, for employees who work more than 40 hours in a week, overtime pay (at 1.5 times an employee's regular rate). However, the minimum wage and overtime requirements do not apply to employees who meet the requirements of the executive, administrative, or professional exemptions. One of the requirements of these exemptions is a minimum weekly salary. The final rule raised the minimum weekly salary to qualify for the exemption from \$684 per week (\$35,568 per year) to \$844 per week (\$43,888 per year) and, effective January 1, 2025, to \$1,128 per week (\$58,656 per year).

Additionally, the final rule raised the annual salary threshold for the exemption for highly compensated employees from \$107,432 per year to \$132,964 per year and, effective January 1, 2025, to \$151,164 per year. The highly compensated employee exemption applies to certain highly compensated employees and combines an annual compensation requirement with a minimal duties test.

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 new \$151,164 total annual compensation threshold for the highly compensated employees exemption is equivalent to the 85th percentile of salaried worker earnings nationwide.

The final rule also provides for future updates of these minimum salary levels every three years starting July 1, 2027, to reflect current earnings data, which will be determined by applying to available data the methodology used to set the salary level in effect at the time of the update. The DOL has advised that at least 150 days before the date of a scheduled update to the standard salary level and the highly compensated employees exemption total annual compensation requirement, the DOL will publish in the Federal Register a notice with the new earnings levels.

The DOL estimates that 4 million employees exempt under the current regulations who earn at least the current weekly salary level of \$684 but less than \$1,128 will become non-exempt employees under the FLSA, unless employers make changes. Similarly, the DOL estimates that there are approximately 300,000 workers who earn at least \$107,432 per year but less than \$151,164 per year and who meet the minimal duties test for the highly compensated employees exemption, but not the standard duties test. These workers will become non-exempt employees unless employers make changes.

The final rule faces multiple legal challenges across federal courts in Texas. On June 28, 2024, a federal judge in Texas temporarily enjoined the DOL from enforcing the final rule raising the minimum salary level requirement for the executive, administrative, and professional exemptions as against Texas government employees. We are continuing to monitor the progress of these cases and any impact they may have on the implementation of the final rule and will advise our readers of any developments.

Conclusion:

Employers (except the State of Texas) must now raise the salaries of exempt employees who are paid below the new minimum salary level or reclassify those employees as non-exempt. Employers should also be mindful of minimum salary levels set under state wage and hour laws, which in some cases are higher than those set under federal law.

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