

Blog Post

Update: The DOL's New Overtime Rule is Officially in the Pipeline

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By [Colby H. Berman](#)

Following up on our [previous blog post](#) about the DOL's Proposed Rule raising minimum salary thresholds for exempt workers, we are now getting closer to game time. The DOL recently submitted a proposed Final Rule through the administrative pipeline, bringing the rule one step closer to publication. In fact, employers can now expect a final version of the rule – and potentially a need to strategize about substantial adjustments to personnel and operations – as early as next month. However, the details of the proposed Final Rule, specifically the exact salary threshold dollar amounts for exempt employees, which is tied to current workforce data, will not be revealed to the public until the Final Rule is published in the Federal Register. And so we wait ...(some more)!

The Path to Publication of Final Rule

As a reminder, the comment period for the Proposed Rule to increase the minimum salary threshold for the white-collar “EAP” (Executive, Administrative, or Professional Employee) and “HCE” (Highly Compensated Employee) exemptions closed in November 2023. Shortly thereafter, the Biden administration announced an anticipated date of April 2024 for a Final Rule to be published. Because the Proposed Rule received more than 55,000 comments, including a lot of pushback from businesses that would need to consider adjusting

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employee classifications and/or compensation, the target April date seemed like more of a placeholder than a commitment. That is, until March 1, when the DOL sent its proposed Final Rule to the Office of Information and Regulatory Affairs (OIRA), which is part of the Office of Management and Budget.

The OIRA is responsible for reviewing federal agencies' draft regulations before they are published in final form. That review includes considering alternatives to the rulemaking and analyzing the rule's costs and benefits on society. After its review of a proposed rule, the OIRA may return the rule for consideration if it is incompatible with law, inconsistent with regulatory principles or the President's policies and priorities, or unnecessarily conflicts with other Executive Branch agency rules or endeavors. The OIRA may also return a rule if the agency's analysis behind it was inadequate, or its analysis does not justify the rule. While there is no minimum amount of time for OIRA to review a rule, it is limited by Executive Order to a review of 90 days, in addition to a one-time 30-day extension. That limitation, however, has not stopped OIRA in the past from taking longer to review rules.

How Employers Can Prepare

Now that the proposed Final Rule is with the OIRA, we can expect to see a Final Rule published in the Federal Register in the coming months, and maybe as early as April. From there, employers would typically have only 60 days to determine how to comply before the Final Rule would go into effect, unless the Final Rule provides for more time. As we previously reported, employers need not panic... yet. Final rules often face legal challenges before they are implemented, and we expect this one to be no different. Also, we will not know the exact dollar threshold that must be met for exempt employees until the Final Rule is published, since it will depend upon the most current workforce data available. Specifically, DOL proposed to set the standard salary threshold level for EAP employees using the

35th percentile of earnings of full-time salaried workers in the lowest-wage Census region (currently the South); and the HCE compensation level at the 85th percentile of full-time salaried workers nationwide. DOL forecasted that the dollar amounts tethered to these percentiles may be higher at time of publication of the Final Rule.

Regardless, employers should start thinking about how they would respond to highly increased overtime exemption salary thresholds, the reclassification and retraining challenges that may come with that, and the corresponding payroll logistics. Absent any change to the forecasted threshold amounts, at a minimum, employers should be evaluating those workers earning less than \$55,068 (EAP) or \$143,988 (HCE) annually, and develop a strategy to move forward in anticipation of compliance with the Final Rule. For employers in states with salary thresholds that are already above the new proposed minimums, they should continue complying with their state-prescribed thresholds.

The attorneys in Akerman's Labor and Employment Practice Group will continue to keep you updated as the Final Rule makes it way to the Federal Register, and remain available to assist employers with the formulation of the best strategy for anticipated compliance.

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