

Blog Post

DOL Unveils Final Overtime Rule and It's Even More of a Pain Than Anticipated

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The U.S. Department of Labor's long-awaited final "Overtime Rule" is here, and it brings drastic changes to requirements employers must follow for paying salaried employees exempt from overtime. Under the Final Rule, which takes effect July 1, 2024, earnings thresholds that determine workers' exemption from federal overtime laws will see *two* big increases in the next eight months, making millions of workers newly eligible for overtime.

As we previously reported, back on September 8, 2023, the DOL published its Proposed Rule to increase the salary thresholds under which employees would qualify for exemption from overtime pay. The September proposal sought to increase the salary threshold for the Executive, Administrative, or Professional (EAP) exemption from \$684 per week (or \$35,568 annually) to \$1,059 per week (or \$55,068 annually), and from \$107,472/year to \$143,988/year for the Highly Compensated Employee (HCE) exemption. The proposal also introduced an "automatic updating mechanism" that would automatically increase the salary minimums every three years without the need for formal rulemaking. The comment period for the Proposed Rule ended on November 7.

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In a slight compromise from the proposed rule, the Final Rule phases these increases with an initial partial increase on July 1, 2024, before increasing the thresholds to the DOL's contemplated levels on January 1, 2025. Thus, on July 1, the EAP exemption threshold increases to \$844/week (or \$43,888 annually) and the HCE exemption to \$132,964. The July increase follows the currently-used methodology for calculating the salary levels: using the 20th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region (the South) for the EAP exemption, and using the 80th percentile of full-time salaried workers nationally for the HCE exemption. When the levels increase again in January, they will do so according to new methodology introduced for the first time in the Final Rule, which uses instead the 35th percentile for the EAP exemption and the 85th percentile for the HCE exemption, resulting in an anticipated EAP threshold of \$1,128/week (or \$58,656 annually) and HCE threshold of \$151,164. This change in methodology significantly broadens the population of employees that will be ineligible for exempt status going forward. Although this change may benefit some employers by allowing them to increase pay more gradually, it also increases the administrative burden of needing to revisit exemptions twice in a six-month period.

In the face of widespread public opposition, the DOL also pushed forward automatic updates to salary thresholds effective every three years starting on July 1, 2027, based on current wage data at the time.

If this feature survives court challenges, it will mean employers will need to reassess exempt classification every three years, and possibly on very short notice depending on when the DOL announces the final amount of the automatic increase.

Court challenges to the Final Rule are likely on the way. Potential arguments against the Final Rule include that the DOL exceeded its authority in creating the automatic updating mechanism which would eliminate the rulemaking process, and that

the Final Rule invokes the “major questions doctrine” with respect to the economy such that only Congress has the authority to make such a change. Note, however, that even if a legal challenge were to successfully invalidate one part of the Final Rule, the Final Rule also includes a severability clause designed to uphold the remainder of its text. While we wait to see if the Final Rule faces any legal challenges as expected, employers should accordingly get ahead of the process and start strategizing about the best ways for their businesses to comply with the Final Rule in its current form in advance of July 1. The attorneys in Akerman’s Labor and Employment group are here to assist in that process.

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