

Practice Update

DOL Final Rule Increases Salary Threshold for Exempt Employees

September 30, 2019

By [Melissa L. Cizmorris](#)

The U.S. Department of Labor (DOL) issued its long-awaited Final Rule stating that all employees who make less than \$684 a week, or \$35,568 per year, must earn overtime pay. This new requirement replaces the current threshold of \$465 per week, or \$23,660 per year, set in 2004. This increase in the standard salary level requires an immediate review of all positions previously classified as exempt where the employee earns less than \$35,568 per year. The new rule takes effect on January 1, 2020, providing employers only a few months to comply.

The Fair Labor Standards Act (FLSA) generally requires covered employers to pay employees a minimum wage of \$7.25 for each hour worked up to 40 hours a week, and 1.5 times that amount for any hours over 40 in a week. The FLSA exempts “any employee employed in a bona fide executive, administrative, or professional capacity.” To qualify for an exemption from minimum wage and overtime requirements, an employee: (1) must be paid a predetermined and fixed salary that is not subject to reduction due to any variation in the quantity or quality of the work performed (the “salary basis test”); (2) must earn a minimum specified salary (the “salary level test”); and (3) must have job duties that primarily involve “executive, administrative, or professional duties” as defined by the FLSA (the “duties test”).

Related People

[Melissa L. Cizmorris](#)

Related Work

[Employment Training and Compliance](#)
[Labor and Employment](#)
[Wage and Hour](#)

Related Offices

[Denver](#)

The DOL's final rule addresses only the salary level test, and increases the minimum salary level to be in line with inflation and current employee earnings in the South and throughout the retail industry. In addition to increasing the standard salary level to \$684 per week, the Final Rule:

- Sets a special salary level of \$455 per week for employees located in Puerto Rico, the United States Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands;
- Sets a special salary level of \$380 per week for employees located in American Samoa; and
- Increases the base salary level to \$1,043 per week for employees in the motion picture industry, provided they continue to meet the duties test.

In addition to increasing the minimum salary to satisfy the salary level test, the Final Rule also:

- Increases the total annual compensation for highly compensated employees (HCE) from \$100,000 to \$107,432, provided HCEs are paid at least the standard salary level of \$684 on a weekly basis;
- Allows employers to include non-discretionary bonuses and incentive pay toward satisfying up to 10% of an employee's salary level, as long as the bonuses or incentive pay are paid on an annual basis;
- Allows employers to make a "catch up" payment within one pay period after the end of the 52 week pay period; and
- Clarifies that employers may pro-rate the standard or special salary levels for newly-hired or terminated employees.

Notably, the Final Rule **does not**:

- Change any of the duties tests; or
- Include any automatic increases to the standard salary level, special salary levels, or salary levels

for HCEs.

In addition to the FLSA, employers must be cognizant of state and local laws that require a higher salary threshold for employees to qualify for a similar exemption under state or local wage and hour laws. For example, in New York City, large employers (11 or more employees) are required to pay exempt employees a minimum of \$58,500 annually or \$1,125 per week. New York small employers (10 or fewer employees) are required to pay exempt employees at least \$52,650 annually or \$1,012.50 per week.

The DOL estimates the Final Rule will result in 1.1 million newly non-exempt employees. Employers will have until the end of the year to review employee position classifications and increase salaries as necessary. If you have any questions about these new requirements and their impact on your business, or applicable state and local laws, contact your Akerman Labor and Employment lawyer.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.