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DOL Issues Final Rule Increasing Salary Limits for Overtime Exemptions – Now What?

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The highly anticipated Department of Labor (DOL) final rule is here with a potential July 1, 2024 implementation date. The rule significantly increases the minimum salary threshold for certain overtime exemptions under the Fair Labor Standards Act (FLSA) and could impact millions of employees' currently exempt from overtime pay and their compensation structures.

Background

The FLSA generally requires covered employers to pay employees a minimum wage and, for employees who work more than 40 hours in a week, overtime pay of at least 1.5 times an employee's regular rate of pay, provided the employee does not fall within a classified exemption. The new rule affects individuals who are employed in positions meeting the requirements for the executive, administrative, professional, and highly compensated employee exemptions. In addition to meeting other requirements outlined in the FLSA related to their specific job duties, employees' pay must meet certain thresholds to qualify for the exemption.

Final Rule Threshold Increase

- Beginning **July 1, 2024**, the final rule increases the salary threshold for FLSA's bona fide **executive, administrative, and professional** employees from \$684 per week (\$35,568 annually) to **\$844 per week (\$43,888 per year)**.
- Beginning **January 1, 2025**, the final rule increases the salary threshold for FLSA's bona fide **executive, administrative, and professional** employees to **\$1,128 per week (\$58,656 per year)**.
- With respect to the **highly compensated employees exemption**, beginning **July 1, 2024**, the final rule will raise the annual compensation threshold from \$107,432 to **\$132,964 per year**. Beginning **January 1, 2025**, the annual compensation threshold for this exemption is raised to **\$151,164 per year**.
- Beginning **July 1, 2027**, and *every three years thereafter*, the salary thresholds will automatically update, using the methodology in effect at the time of each update.

The DOL estimates that the final rule will impact approximately four million workers in the first year and result in an income transfer of approximately

\$1.5 billion from employers to employees.

Will the Final Rule Go Into Effect?

This is not the first time that the DOL has sought to increase the salary thresholds. The last time, in 2016-2017, a Texas federal court issued a nationwide injunction against the DOL from implementing similar salary threshold increases. Specifically, the court determined that the Fair Labor Standards Act itself only stated that to qualify for these exemptions the employees need be paid on a salary basis—and the FLSA did not require a threshold salary amount. The court found that the DOL's authority was exceeded by imposing such salary thresholds. In addition, some have argued that these automatic updates exceed the DOL's legal authority. The DOL takes the position that these regular updates ensure predictability and protect against future erosion of overtime protections so that they do not become less effective over time. Lawsuits will certainly be filed to challenge the implementation of the final rule, but it is too early to tell what will take place.

What Employers Can Do to Prepare?

If you are an employer, you are probably asking yourself (repeatedly) – Now What? Despite potential legal challenges, employers should begin preparations for compliance by July 1, 2024. We recommend employers complete the following steps:

- Complete an audit or review of your exempt employee classifications in the next month or so to prepare. To complete the audit, identify those that may not meet the new thresholds in July, and particularly in January 2025. Then, consider:
 - a. Do these positions meet the job duties test to be exempt;
 - b. Is the company in a position to raise the salary scale to the new increased salary thresholds; and
 - c. If the answer to (a) or (b) is questionable or not workable for the business, consider making the change now to an hourly position with the potential for overtime.
- Complete a similar audit or review process for any employees classified under the highly compensated employee exemption.

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