

## NEW DOL RULE MAKES MORE EMPLOYEES ELIGIBLE FOR OVERTIME

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Employers have had many questions related to the new overtime rule that was recently announced by the U.S. Department of Labor (DOL). This new rule requires employers to meet a significantly higher salary threshold—up to a 65% increase—to classify certain employees as exempt from the FLSA's overtime regulations. Although legal challenges claiming the DOL exceeded its authority in issuing the rule are expected, businesses must be ready to comply with the final rule in its current form unless and until a court enjoins the rule from taking effect before the July 1, 2024 effective date.

### Overview of the DOL Final Rule

As shown in the table below, the salary thresholds for the Executive, Administrative, and Professional employee exemptions (i.e., the so-called "white-collar" exemptions) will increase in three phases under the final rule, beginning on July 1, 2024:

Date	Weekly Salary	Annual Salary	Highly Compensated Employees
Until July 1, 2024	\$684	\$35,568	\$107,432
July 1, 2024	\$844	\$43,888	\$132,964
January 1, 2025	\$1,128	\$58,656	\$151,164
July 1, 2027, and every 3 years thereafter	To be determined based on wage data available at the time of the update		

### Practical Tips for Employers

Despite anticipated legal challenges, employers should now identify exempt employees who will be impacted by the rule and decide whether (1) they will increase these employees' salaries to maintain their exempt status or (2) convert them to nonexempt status. If employees will be reclassified as nonexempt, employers should consider evaluating any budgetary impacts related to overtime costs. Additionally, for newly classified nonexempt employees, employers will need to prepare to train these employees on its timekeeping policies and procedures and carefully track hours worked to ensure that nonexempt employees receive all overtime compensation to which they are entitled. Employers should also be prepared to address morale issues that may arise from converting exempt employees to nonexempt status, including crafting carefully planned communications to ensure affected employees understand they are not being demoted.

Although the timeline to implement these changes remains somewhat uncertain, the new rule provides employers an opportunity to evaluate the FLSA status of all employees and to review their exemption determinations more broadly to ensure all employees are properly classified. Employers should seek guidance from legal counsel if they have questions regarding FLSA classifications or exemptions, as incorrect worker classification can lead to significant penalties.



#### Additional Tips for Employers:

- 1. Conduct regular wage and hour audits.** Employers far too often fail to conduct internal audits of their workers, including independent contractors, to ensure their workers are properly classified. As a general best practice, audits should be conducted at least once a year and can be done with the assistance of counsel.
- 2. Identify the applicable exemption relied upon in the employer's records.** Often times, employers classify employees as exempt, but fail to identify the applicable exemption relied upon in reaching the exempt determination. This information must be recorded.
- 3. Do not assume that if an exemption can apply to a specific worker that it should always be used.** In certain situations, it may be better to classify an employee as nonexempt and overtime eligible. This may be the case where an employee regularly works less than 40 hours weekly and the employer already has existing timekeeping policies and recording methods in place.
- 4. If reclassifying a salaried employee to an hourly, nonexempt employee, understand there is no obligation to determine the new pay rate by dividing the salary by 40 hours.** Various methods exist to calculate the new rate. Some methods are cost-neutral and allow for a smooth transition.
- 5. Understand that exempt status is not limited to meeting the required salary level alone.** The salary must also be paid without deductions (with limited exceptions), and a duties test must be met.