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The Department of Labor's Final Rule on Exemptions for White-Collar Employees

On April 23, 2024, the U.S. Department of Labor's Wage and Hour Division ("Department") announced a [Final Rule](#), which revises certain regulations issued under the Fair Labor Standards Act ("FLSA"). The regulations exempt certain executive, administrative, and professional ("EAP") employees from the FLSA's minimum wage and overtime pay requirements. To meet the exemption, EAP employees must generally meet three tests: the Salary Basis Test, the Salary Level Test, and the Duties Test. The Final Rule also provides a Highly Compensated Employee ("HCE") Exemption, which is a different test for highly compensated employees who are paid a salary, earn above a higher total annual compensation level, and satisfy a minimal duties test. Unlike prior revisions to the FLSA's EAP and HCE exemption requirements, the Final Rule provides for automatic updating every three years.

The FLSA's Exemption Criteria

The FLSA generally requires covered employers pay overtime pay of one and one-half times the regular rate of pay for all hours worked over 40 in a workweek, unless the employee is considered "exempt" from overtime pay. For certain exemptions to apply, and thus for the employee to be "exempt" from overtime pay, the employee must satisfy three criteria.

First, the employee must satisfy the Salary Basis Test. The Salary Basis Test requires employees to be paid a predetermined and fixed salary. This means that an employee's salary cannot be subject to reduction based on the quality or quantity of the work they performed. Second, the employee must meet the Salary Level Test. The Salary Level Test mandates that the amount of salary paid to an employee must meet a minimum, specified amount. Third, and finally, the employee must fulfill the Duties Test. The Duties Test states that the primary duties of the employee's job must involve executive, administrative, or professional duties (as defined by the federal regulations). Notably, an employee's job title alone does not determine exemption status, nor does the mere payment of a salary. Rather, exemption status depends on all three criteria described above.

The Final Rule

EAP employees are currently required to earn a salary of at least \$684 per week, or \$35,568 annually, to satisfy the Salary Level Test. Likewise, employees subject to the HCE exemption are required to earn a salary of \$107,432 or more per year. The Final Rule increases the salary minimum under the Salary Level Test to \$844 per week, or \$43,888 per year, effective July 1, 2024, and to \$1,128 per week, or \$58,656 per year, effective January 1, 2025. The annual compensation requirement for the HCE exemption also will increase to \$132,964 by July 1, 2024, and again to \$151,164 on January 1, 2025.

The Department also incorporated a triennial update mechanism into the Final Rule. Under this mechanism, subsequent updates to the Salary Level Test and the HCE exemption will occur every three years after January 1, 2025, beginning January 1, 2027. These triennial updates will utilize current earnings data and methodologies in place to ensure the earnings thresholds remain effective in distinguishing between exempt and nonexempt employees over time.

Employer Takeaways

Although the Final Rule could face legal challenges, employers should start planning now since the deadline to comply is only two months away. This planning process should begin by reviewing current job classifications for EAP employees to determine how many of these employees earn between \$35,568 and \$58,656 annually. Employers should then be prepared either to raise these currently exempt employees to the new proposed thresholds or to convert these employees to nonexempt status.

In reviewing their options, employers should consider the impact overtime payments to any potential nonexempt employees might have on the organization. This will include evaluation of where to set the regular rate of pay for employees who may convert to nonexempt status and how other compensation, such as bonuses, may factor into determining whether to convert an employee from exempt to nonexempt status. To aid in this assessment, employers may want to preliminarily track or otherwise evaluate the actual hours worked by such employees. Such tracking can help employers better understand how conversion of an employee from exempt to nonexempt might impact the business and the employees before the effective date of the Final Rule. Where increasing the salary basis to meet the Final Rule's new requirements is considered, employers should also carefully evaluate the duties of the position to confirm all requirements to maintain an EAP exemption will be met.

Review of state law is also recommended, as state laws can differ from the FLSA, and there may be state notice requirements for compensation changes. It also is a good time for employers to review their wage and hour policies and procedures to ensure compliance with applicable state and federal law.

In addition to meeting the relevant legal requirements, employers should consider morale and other nonmonetary impacts associated with converting salaried exempt employees to hourly nonexempt. Careful consideration of how to communicate changes that will be implemented is recommended.

Employers also should plan on training employees who will convert from an exempt classification to a nonexempt status. Such training should include the policies and procedures the converted employees will have to adhere to with the conversion, including timekeeping requirements, the need to request approval to work overtime, off the clock work restrictions, changes in use of company equipment or systems when off duty, meal and rest period requirements, and paid time off requirements, all of which may differ for the newly converted employee. Maintaining a short monitoring period after the conversion to ensure compliance with this training is also recommended.

If you have any questions about the Department's Final Rule, or how it may impact your organization, please contact your Kutak Rock attorney, a member of the firm's [National Employment Law Group](#) or [FLSA Litigation and Wage and Hour Defense Group](#). You may also visit us at www.kutakrock.com.

