

Department of Labor Ups the Ante for Exempt Status Employees

April 25, 2024

In a Final Rule announced on April 22, the U.S. Department of Labor raised the minimum salary that an employee must receive for the employee to be exempt from overtime pay. Effective July 1, 2024, under the most common exemptions, the minimum salary necessary for exempt status will increase to \$43,888 per year (\$844 per week). The ante goes up again on January 1, 2025, when an employee who is paid less than \$58,656 per year (\$1,128 per week) will not qualify as exempt. These are significant increases from the current salary requirement of \$35,568 per year (\$684 per week).

Under the Executive, Administrative or Professional exemptions, an employee qualifies as exempt from overtime pay by satisfying three tests: the employee's duties qualify as exempt work; the employee (with very limited exceptions) is paid on a salary basis; and the employee's salary level is no less than the required minimum. The new Final Rule does not change the "duties" or "salary basis" tests, only the "salary minimum". The Department of Labor predicts that these changes, the first since 2019, will impact 4 million workers in the first year.

The Final Rule also addresses the salary minimum for the Highly Compensated Employee exemption, which relaxes the duties requirements for qualifying employees. Currently, an employee must be paid \$107,432 per year to be considered a Highly Compensated Employee. That bar is raised to \$132,964 on July 1, 2024 and to \$151,164 on January 1, 2025.

Employers who have exempt workers that currently do not meet the new salary minimums will face some high stakes decisions. An employee could be given a raise to meet the new minimum and retain exempt status. Or the employer could leave the employee at the current pay level (either as a salary or converted to hourly pay) and pay overtime for work over 40 hours in a week. Employers will also need to track the hours worked by newly-nonexempt employees to ensure compliance with the overtime requirements. All of these decisions will potentially have financial, equity and morale impacts.

Similar rule changes in the past have spawned lawsuits, and it would be surprising if this Final Rule is not also subject to litigation. This could delay or nullify the rule. Thus, while it is not too early for employers to begin considering a strategy, it would seem to make sense to wait until closer to the deadlines to implement any changes.