

EMPLOYMENT LAW UPDATE

April 26, 2024

DOL ISSUES FINAL RULE INCREASING SALARY THRESHOLD FOR FLSA OVERTIME EXEMPTIONS

On April 23, 2024 the Department of Labor issued its final rule that, amongst other things, substantially increases the salary that an executive, administrative or professional exempt employee must be paid to qualify for an exemption under the Fair Labor Standards Act. The DOL estimates that approximately 4 million workers will lose their exempt status and would need to be paid overtime for all hours over 40 worked in a workweek.

Under the FLSA, an employee is exempt from the overtime requirements if they meet both a job duties test and the salary threshold test. If they meet both of these tests, the employer is not required to pay the employee overtime for working over 40 hours in a workweek. This is what permits an employer to have a salaried employee that works say, 60 hours a week, while having a controlled, repeatable labor cost each workweek. It is important to note that the new rule does not amend or change the job duties test – so employees will still need to meet the same job duties test for their position.

What the rule does do is significantly increase the salary threshold test so that the FLSA exemptions can only be used for employees with higher annual salaries. The rules increases the present salary threshold of \$35,568/year to \$43,888 by July 1, 2024 and a whopping \$58,656 by January 1, 2025. Also, while a less utilized exemption, it is important to note that the rule also increases the highly compensated employee threshold, from \$107,432 presently, to \$132,964 by July 1, 2024 and \$151,164 by January 1, 2025.

While the final rule will likely be subject to legal challenges over the next few months before taking effect on July 1, 2024, Employers will need to make a very important decision so they are prepared in the event it does take effect as scheduled. For each exempt salaried employee presently making less than \$43,888/year, Employers will have to choose to either: (1) increase the pay to at least \$43,888/year by July 1, 2024 (and \$58,656 by January 1, 2025) or (2) cease using the exemption for the employee and transition them to hourly, non-exempt employees who are subject to overtime requirements and other practical impacts.

Choosing option 1 would obviously represent a dramatic increase in labor costs. If an employer has a salaried exempt employee presently making \$37,500/year, they will need to nearly double their salary if the employer wishes to continue utilizing the exemption into 2027 and beyond. While not all increases will need to be so dramatic, even an unanticipated 10-20% raise for the majority of salaried employees at a company will have significant impacts on the bottom line.

While it may be tempting to simply choose option 2 and convert these employees to hourly, non-exempt employees, this would also represent a significant cultural change. It is not as simple as just having to convert them to an hourly rate and paying them overtime for all hours over 40 worked in a workweek. There are other practical impacts as well – such employees now have to punch in and out, carefully track their time, ensure they take their unpaid breaks and don't

perform any work during such unpaid breaks, ensure they aren't working from home answering emails without reporting the time worked, carefully track PTO or other time off policies, and the like. It will undoubtedly be a culture shock to the transitioning employees, their supervisors, and others and there will be associated growing pains. Also, companies will likely need to seek to increase the number of employees they have in such roles to spread the work out and avoid having to pay such employees overtime on a regular basis or there will still be substantial increased labor costs.

For most employers it will make sense to take a phased approach where those salaried exempt employees who are close to the \$58,656 threshold that will be required on January 1, 2025 will have their salary increased to meet the threshold, those far away from the new threshold (say between \$35,568-\$42,500) will be converted to hourly non-exempt due to too much increased labor costs, and those in between the extremes are considered on a case by case basis. However, each business will need to develop its own plan for dealing with these significant changes. Remember that violations of the FLSA in terms of misclassification can be some of the more costly wage and hour mistakes out there. And there is no better way to guarantee a misstep and invite a misclassification claim than by waiting until the last minute and not having a well thought out plan in place.

We will continue to monitor the status of the rule and any legal challenges which may delay or impact it taking effect.

If you have any questions related to this information or any other employment laws that may affect your business, please contact Aaron J. Graf Mawicke & Goisman, S.C.

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