MINTZ

DOL Releases Final Rule Substantially Increasing Minimum Salary Thresholds for Most Exempt Employees

April 25, 2024 | Blog | By **H. Andrew Matzkin**, **Evan M. Piercey**

VIEWPOINT TOPICS

- Employment

RELATED PRACTICES

- Employment Litigation & Arbitration
- Employment Counseling and Training
- Wage & Hour

RELATED INDUSTRIES

On April 23, 2024, the U.S. Department of Labor ("DOL") released a new **final rule** that significantly increases the minimum salary threshold to qualify for the executive, administrative, professional, and highly compensated employee exemptions under the Fair Labor Standards Act ("FLSA"). Initial increased salary thresholds are scheduled to take effect on July 1, 2024, followed by additional increases just 6 months later on January 1, 2025, and then followed by automatic increases in subsequent years. Employers must act quickly to prepare for the implementation of this new rule, which will impact approximately 4 million workers nationwide. More specifically, absent any successful legal challenges, employers will need to either (A) raise the salaries of many exempt employees, or (B) reclassify certain exempt employees to non-exempt and overtime eligible, while also accounting for the impact these compensation changes may have on the employer's overall compensation schemes. We discuss the rule and implications for employers below.

The New Salary Thresholds

Under the DOL's previous FLSA rule:

- The minimum salary threshold to qualify for the executive, administrative, and professional employee exemptions was $684 per week ($35,568 annually).
- The minimum earning threshold to qualify for the highly compensated employee exemption—a worker who customarily and regularly performs any one or more of the exempt duties or responsibilities of an exempt executive, administrative, or professional employee— was $107,432 annually.

The DOL's new FLSA rule raises these minimum thresholds as follows:

Year	Executive, Administrative, and Professional Employee Salary Threshold	Highly Compen Threshold
By July 1, 2024	$844 per week ($43,888) annually	$132,964 annu
By January 1, 2025	$1,128 per week ($58,656 annually)	$151,164 annu
Beginning July 1, 2027, and Every Three (3) Years Thereafter	DOL will **automatically update** the salary thresholds for execu professional, and highly compensated employees based on ear	

These increases are significant. For executive, administrative, and professional exemptions, the initial July 1, 2024 increase represents a 23 percent increase from the current threshold, and the January 1, 2025 increase represents a nearly 65 percent increase from the current threshold. The highly compensated employee thresholds see similar increases—a 23 percent increase by July 1, 2024 and a 41 percent increase by January 1, 2025. The automatic increases expected every three years thereafter add yet another wrinkle to this rule. While the DOL did not release the exact amount that the thresholds will increase to by July 1, 2027 or thereafter, it provided that the increase will be based on the same earnings data it used in setting the present increases.

Implications of the Rule and Next Steps for Employers

Absent legal challenges, the DOL's new FLSA rule will take effect on July 1, 2024, meaning employers must act quickly. Employers should begin to prepare for these imminent changes (and subsequent increases) by taking the following steps:

- Determine all employees in your workforce impacted by the increases, i.e., exempt employees that will earn less than the increased salary threshold under the DOL's new FLSA rule, including not only those impacted by the initial July 1, 2024 increases (earning less than $844 per week), but also those on January 1, 2025 and then in subsequent years.
- Consider whether you will increase the salaries of exempt employees to meet the new minimum threshold or reclassify certain employees as nonexempt and overtime eligible.
- If you decide to increase salaries, consider how that will impact other portions of your workforce—will this create any upward pressure on salaries of other employees, and if so, will it require changes to the compensation of others?
- If you decide to make certain employees overtime-eligible, consider how this will impact your budget and how, if at all, the duties of those employees need to change to account for the presence of overtime and the counting of "hours worked."
- Consider how the need to either increase salaries or reclassify employees might impact other types of exempt employees not impacted by the DOL rule (e.g., computer-professional exemption, inside sales exemption, the learned professional exemption, etc.). For example, will salary increases for certain classifications of exempt employees necessitate or compel corresponding increases for those not covered by the DOL rule?
- Evaluate how, if at all, these increases interact with state pay transparency laws or pay equity laws.
- Plan the specific timing of any changes in exemption status, the implementation of required modifications to your payment policies and procedures, and the preparation of communications with your employees regarding this change.

In addition, employers should also consider how state-specific exemption thresholds impact these decisions. For example, New York's DOL already passed increases to the minimum salary threshold to qualify for the administrative and executive exemptions that exceed the DOL's thresholds (at least until we see any future increases in 2027 and beyond) which went into effect January 1, 2024. Thus, while New York employers have likely already been coming into compliance with new state thresholds, the DOL's rule raises the question of whether broader increases nationwide to create parity between employees located in New York and elsewhere is a prudent decision.

Note that the legal landscape is ripe for challenges to the rule. The U.S. Supreme Court is deciding this term whether to limit or overturn *Chevron* deference to administrative agencies in *Loper Bright Enterprises v. Raimondo* (and *Relentless, Inc. v. Department of Commerce*, a related case), a decision that, in turn, could pave the way for more robust challenges to DOL's rulemaking authority and ability to implement these increases over the coming years. Regardless of any legal challenges, employers should still act quickly to come into compliance with the DOL rule. In connection with these compliance efforts, employers should also consider whether now is a good time to conduct an overall audit of exemption statuses and compensation structures companywide.

Mintz's Employment team is following the implementation of this rule and any legal challenges that may emerge in the coming days and weeks and stands ready to assist employers preparing to comply with this new rule.

Authors

H. Andrew Matzkin, Member

H. Andrew Matzkin is an employment litigator at Mintz, and he provides counsel on labor and employment issues. Drew represents clients in life sciences, technology, industrial, and professional services before federal and state courts, arbitrators, and administrative agencies.

Evan M. Piercey, Associate

Evan M. Piercey is an Associate at Mintz who litigates employment disputes before state and federal courts and administrative agencies. He also advises clients on a range of issues, including employment agreements and compliance with employment laws.