

Eye on Washington Regulatory Update



DOL Releases Final Overtime Rule

On September 24, 2019, the United States Department of Labor (DOL) released its final rules for establishing the amounts required to be earned by an employee in order for that employee to be exempt from the Fair Labor Standards Act (FLSA) overtime requirements.

Under the final rule to be effective January 1, 2020, the amounts required to be earned by an employee for that employee to be exempt from the FLSA overtime requirements will be \$684 per week (\$35,568 annually).

The new salary level for a Highly Compensated Employee (HCE) will be increased to \$107,432 from the current level of \$100,000.

Background

On May 18, 2016, the DOL under the Obama administration released final regulations that modified certain provisions of the FLSA. Specifically, the final regulations increased the minimum salary required to be earned by an employee in order for that employee to be exempt from the FLSA overtime requirements from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476 per year). The current levels have been in place since 2004. The final regulations also established a mechanism for automatically updating the salary and compensation levels every three years, starting on January 1, 2020.

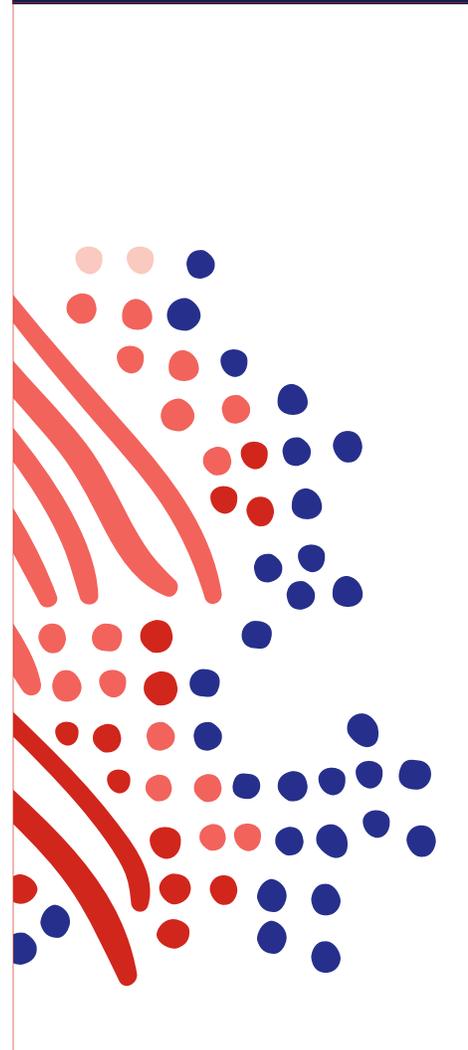
Additionally, the final regulations increased the total annual compensation requirement for highly compensated employees (HCEs) subject to a minimal duties test to \$134,004 per year from the current threshold of \$100,000, which was also in place since 2004. Under the final regulations, an employee earning at least the required threshold is exempt from overtime if the employee customarily and regularly spends time on one or more exempt duties and the employee does not engage in manual work.

The changes to the FLSA were scheduled to go into effect on December 1, 2016.

Challenge to FLSA Overtime Rules

Several business groups and twenty-one states filed lawsuits against the DOL in federal court (the United States District Court, Eastern District of Texas, Sherman Division) challenging the FLSA changes. On October 12, 2016, the twenty-one states asked the court for emergency preliminary injunctive relief and argued that the FLSA's overtime changes violated the Constitution by regulating the states and coercing them to adopt wage policy choices that adversely affected the states' priorities, budgets, and services. The court agreed with the states and granted an injunction delaying the overtime rule scheduled to go into effect on December 1st. The delay was temporary while the case continued to be litigated and the court determined whether the DOL had the authority to make the FLSA changes and whether the FLSA changes are valid. The delay applied to employers nationwide.

On August 31, 2017, the court issued a final decision striking down the changes to the FLSA overtime rule originally scheduled to be effective December 1, 2016.



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Subsequently, the DOL under the Trump administration announced that it would release a proposal establishing a new threshold and began gathering public input in July 2017. The DOL proposal was released on March 7, 2019.

DOL March 2019 Proposal:

Under the proposal, the amounts required to be earned by an employee in order for that employee to be exempt from the FLSA overtime requirements will be \$679 per week (\$35,308 annually). This is an increase from the current level of \$455 per week (\$23,660 annually) but less than under the Obama administration rules which was \$913 per week (\$47,476 annually).

DOL Final Rule Effective January 1, 2020:

Under the final rule, the amounts required to be earned by an employee in order for that employee to be exempt from the FLSA overtime requirements will be \$684 per week (\$35,568 annually). This is an increase from the current level of \$455 per week (\$23,660 annually) but less than under the Obama administration rules which was \$913 per week (\$47,476 annually) and less than the proposed rules which was \$679 per week (\$35,308 annually).

The new salary level for a Highly Compensated Employee (HCE) will be \$107,432. The current level is \$100,000. Under the Obama rules and the March 2019 proposed rule it was \$134,004 and \$147,414 respectively.

As under the Obama rules and the proposed rules, the final rules permit employers to satisfy the new salary-level requirement

by using nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the salary level test. Also, there is no change to the duties requirements to be considered exempt from FLSA overtime in addition to the required threshold.

The final rule does not provide for any automatic increases to the salary thresholds. In the final ruling, the DOL reaffirmed "its intent to update the standard salary level and HCE total annual compensation threshold more regularly in the future using notice and comment rulemaking" but declined to adopt the proposed rule to revisit the salary levels every four years. Under the Obama rules, a mechanism for automatically updating the salary and compensation levels every three years was established, starting on January 1, 2020.

It is important to note that the new salary levels do not apply to employers in Puerto Rico, the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands. The current level of \$455 per week (\$23,660 annually) will continue to apply in those jurisdictions.

For a copy of the DOL final rule, click on the link provided below.
https://www.dol.gov/whd/overtime2019/overtime_FR.pdf

The DOL has also released the following documents in conjunction with the final rule:

Fact Sheet:
https://www.dol.gov/whd/overtime2019/overtime_FS.htm

Frequently Asked Questions:
https://www.dol.gov/whd/overtime2019/overtime_FAQ.htm#10

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