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DOL Final Rule Significantly Increases Salary Thresholds for Overtime Exempt Employees

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Executive Summary

- On April 23, 2024, the United States Department of Labor released its final rule to increase the minimum salary requirements for the “white collar” exemption applicable to executive, administrative and professional employees to exempt them from minimum wage and overtime pay requirements under the Fair Labor Standards Act (“FLSA”).
- Effective July 1, 2024, an executive, administrative or professional employee must be paid an annual salary of \$43,888 per year (up from \$35,568) in order to be classified as salaried-exempt. This threshold will increase to \$58,656 on January 1, 2025. Meanwhile, the annual salary threshold for the highly compensated employee exemption will increase to \$132,964 on July 1, 2024 (up from \$107,432), and then again to \$151,164 on January 1, 2025.
- These substantial increases in annual salary minimums pose a financial challenge for many employers utilizing such exemptions. Employers will be left with limited options: (i) raising pay for salaried-exempt employees in line with the thresholds; (ii) re-classifying them as hourly non-exempt employees subject to minimum wage and overtime requirements; or (iii) re-structuring their operations.

Current Overtime Rule

The FLSA requires that overtime be paid to employees for hours worked over 40 in a week unless the employee meets a certain exemption. Employees exempt from overtime include, amongst others, those employed as bona fide executive, administrative, or professional (EAP) employees – commonly referred to as the “white collar” exemptions. For decades, the DOL has used a three-part test to determine an employee qualifies for an exemption. In order to qualify for one of these white-collar exemptions, EAP employees must:

- primarily perform executive, administrative or professional duties as provided in the DOL’s regulations (the duties test);
- be paid on a salary basis, meaning that the employee is paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the salary basis test); and

- be paid more than a specified salary threshold, currently \$684 per week or \$35,568 annually (the salary level test).

Additionally, under the highly compensated employee (HCE) test, certain employees are exempt from the FLSA's overtime pay requirements if they: (1) are paid total annual compensation of at least \$107,432; (2) receive at least \$684 per week paid on a salary or fee basis; (3) perform office or non-manual work; and (4) customarily and regularly perform at least one of the exempt duties or responsibilities of an executive, administrative or professional employee.

Final Overtime Rule

The final rule makes the following notable changes:

- Increases minimum salary threshold level for EAP exempt employees. Beginning July 1, 2024, the final rule calls for an increase in the threshold for EAP exempt employees to \$43,888 per year (up from \$35,568). On January 1, 2025, the final rule will again raise the threshold for EAP exempt employees, up to \$58,656 per year.
- Increases total compensation threshold for the "HCE" exemption. Beginning July 1, 2024, the total annual compensation requirement for highly compensated employees will be \$132,964 (up from \$107,432). On January 1, 2025, the annual compensation requirement will again increase to \$151,164.
- Automatic updates every three years. Beginning July 1, 2027, and every three years thereafter, the salary thresholds will automatically increase, using wage data available at the time of the update.

Recommendations for Employers

Employers are encouraged to reassess their employee classifications to ensure proper classification, both in terms of salary threshold and job duties, and identify any existing misclassification issues. Then, employers should determine if any current exempt employees may be impacted by the final rule, and how they wish to handle such employees in the future. Employers will be left with limited options: (i) raising pay for salaried-exempt employees to meet the increased thresholds; (ii) re-classifying them as hourly non-exempt employees subject to minimum wage and overtime requirements; or (iii) re-structuring their operations. Employers not prepared to raise wages sufficient to meet the proposed salary thresholds may wish to review the impacted salaried-exempt employees' average hours per work week to estimate future overtime hours or consider whether their work can be redistributed in a manner to reduce or eliminate the need for overtime hours. Notably, to calculate overtime for non-exempt employees, employers must factor nondiscretionary bonuses, commissions and other such types of compensation into the employee's regular rate.

The DOL estimates that the final salary thresholds will result in millions of American workers either receiving salary increases to remain exempt or becoming eligible for overtime. Employment practitioners anticipate interested business groups will oppose the final rule by filing litigation which may delay its implementation. Despite any legal challenges the final rule may face, employers should still understand its impact on their workplace and be prepared to comply by July 1, 2024.

If you have any questions about the DOL's final overtime rule or its impact on your company's employee classifications, please contact Naureen Amjad, Kevin Borozan or any other member of Masuda Funai's Employment, Labor and Benefits Group.

Masuda Funai is a full-service law firm with offices in Chicago, Detroit, Los Angeles, and Schaumburg.