

Fair Labor Standards Act – United States Department of Labor’s April 23, 2024 Final Rule, Effective July 1, 2024

The Fair Labor Standards Act (FLSA) governs, among other things, the payment of overtime wages to so-called “non-exempt” employees. To be classified as “exempt” from the payment of overtime, employees must meet one of several different tests. Most of these tests utilize salary as a threshold qualification.

On April 23, 2024, the United States Department of Labor (“DOL”) announced a Final Rule increasing the FLSA’s annual salary-level threshold for the executive, administrative, or professional (collectively “White Collar”) exemptions to the overtime requirements. In a recent [press release](#), the DOL emphasized that the Final Rule will “ensur[e] that lower-paid salaried workers receive their hard-earned pay or get much-deserved time back with their families[.]” The DOL’s final rule will also increase the FLSA’s annual salary-level threshold for the highly compensated employee (“HCE”) exemption to the overtime requirements. Although legal challenges to the DOL’s Final Rule are currently pending, nationwide implementation of the Final Rule has not yet been stayed by any court. A recent court decision in Texas enjoined enforcement of the Final Rule for Texas state employees only, although we anticipate additional court rulings over the next several months that may follow suit, and/or address the question on a national level. In the meantime, we wanted you to be aware of what the DOL’s Final Rule requires, should it not be struck down by a court or modified.

Compliance with the FLSA will require municipalities to take cognizance of the adjustments mandated by the DOL’s Final Rule. Implementation of the Final Rule will progress gradually, with stepped increases on July 1, 2024 and July 1, 2025. Beginning July 1, 2027, every three years automatic increases will be made in the annual salary-level threshold using methodology based on U.S. Census salary data.

The planned salary threshold increases are as follows:

Date	Salary Threshold for White Collar Exemption	Annual Compensation Threshold for Highly Compensated Employee Exemption
1 July 2024	\$43,888 per year (\$844 per week)	\$132,964 per year, which includes at least \$844 per week (paid on a salary or fee basis)
1 January 2025	\$58,656 per year (\$1,128 per week)	\$151,164 per year, which includes at least \$1,128 per week (paid on a salary or fee basis)
1 July and every three years after	To be determined using revised methodologies as applied to earnings data available at such time	To be determined using revised methodologies as applied to earnings data available at such time

Preparing for the Future

The DOL's Final Rule increasing nearly 65% the annual salary thresholds for the White Collar and HCE exemptions to the FLSA overtime requirements will undoubtedly affect millions of employees in both the Commonwealth and the United States as a whole. Employers will have to analyze whether to increase the salary of currently exempt employees, so they remain exempt under the new standard. Employers that do not increase these employees' salaries must be prepared to pay overtime when they work in excess of 40 hours in a given workweek.

In planning for the initial, and then automatic, threshold increases, and the financial implications that may result, it will be useful to develop and implement internal procedures to monitor compliance. Failure to comply with the Final Rule can result in significant penalties under the FLSA. Municipalities and other public sector entities may start by identifying employees in exempt positions currently earning less than the new threshold levels and determine whether to: (1) increase their salaries beyond the newly increased thresholds; or (2) reclassify them as non-exempt and begin monitoring their hours and overtime to ensure compliance with the FLSA.

This summary of the Final Rule is general in nature. In order to properly classify a position as exempt or non-exempt, employers are urged to consider an employee's particular duties and level of responsibility on a case by case basis. In order to properly classify a particular employee and determine their entitlement to overtime wages, an employer must review the so-called White Collar and Highly Compensated Employee exemptions and other applicable provisions of the FLSA and the Final Rule. A summary of the various tests can be found [here](#). Ultimately, employers have an affirmative obligation under the FLSA to ensure that their employees are properly classified, and care should be taken to analyze the issues fully, and consult with counsel, as necessary, before making any final determination with respect to an employee's entitlement to overtime wages.

If you have any questions concerning the Fair Labor Standards Act, please contact any member of the firm's Labor and Employment Practice Group at 617.556.0007. Access to this eUpdate, and many others, is found on our website under the "Resources" tab at www.k-plaw.com, or, to go directly to the eUpdate page, click [here](#).

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