

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

**Prepared for 2024 MASC/M.A.S.S. Joint Conference**

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
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### **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.

Please contact KP Law Attorney [Darren Klein](#) at 617.556.0007 with any questions.

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## FAIR LABOR STANDARDS ACT - Tests for “Exempt” Employees

### Prepared for 2024 MASC/M.A.S.S. Joint Conference

**Introduction.** The federal Fair Labor Standards Act (FLSA) governs, among other things, requirements for the payment of a minimum hourly wage, as well as overtime pay for certain classes of employees. We are often asked questions about how to classify employees for purposes of determining those positions for which overtime compensation must be paid under the FLSA. Employees for whom overtime is required under the FLSA are referred to as “non-exempt” (in other words, not exempt from the FLSA’s overtime requirements), while employees that are not entitled to overtime compensation are referred to as “exempt” employees. This eUpdate provides a brief overview of the FLSA regulations governing “exempt” vs. “non-exempt” status, for purposes of determining which public sector employees are exempt from the FLSA and which are not.

**I. Basic Overtime Requirement.** The FLSA generally requires that “non-exempt” employees be paid time and one half for all time worked over 40 hours per week. This includes all time actually worked, regardless of whether an employee was scheduled to work more or less than 40 hours per week, or whether the overtime work was approved in advance by the employer. Employers may obligate themselves to more generous overtime benefits, such as agreeing in a collective bargaining agreement to pay overtime for hours worked in excess of a set number of hours per day (rather than calculated on a weekly basis).

Furthermore, there are specific regulations that address public safety employees, which allow police and fire departments to set up work periods of 7 to 28 days. Departments which adopt such work periods have different requirements for determining when overtime pay is required. Fire or police departments with fewer than 5 full or part-time police officers or fire fighters are exempt from the FLSA’s overtime requirements (but not the minimum wage requirements). 29 U.S.C. §213(b)(20).

Against this backdrop, there are several general categories of exempt employees, which are discussed below. In 2004, the FLSA regulations were amended to clarify that in order to be “exempt” under the FLSA (and thus not entitled to overtime under the FLSA), an employee must not only be paid a certain amount of money on a “salary” basis, but also must meet one of the below-described tests.

### **II. The Tests for Exemption from the FLSA’s Overtime Requirements**

**A. Salary-Level Threshold.** Until July 1, 2024, to qualify as exempt, an employee must receive a minimum salary of \$684 per week. In the case of computer employees, that minimum salary may be either \$684 per week or \$27.63 per hour. 29 CFR §541.600(a)-(e). This minimum salary amount is periodically adjusted consistent with inflation and other concerns. The \$684-per-week requirement will be met if the employee is compensated

biweekly on a salary basis of not less than \$1,368, semimonthly on a salary basis of not less than \$1,482, or monthly on a salary basis of not less than \$2,964.

As discussed in further detail in a separate eUpdate which you can find here, on April 23, 2024, the United States Department of Labor (DOL) announced a Final Rule which will increase the basic salary-level threshold for the executive, administrative, or professional exemptions to the overtime requirements to \$844 per week beginning on July 1, 2024. The salary-level threshold will be increased again on January 1, 2025 to \$1,128 per week. In order to meet the salary-level threshold under the current or the new adjusted models, the compensation paid to an employee may not be reduced due to variations in the quality or quantity of the work performed.

It is important to understand that merely earning the minimum salary requirement does not render an employee exempt. Similarly, employees who are “salaried” are not automatically exempt from the FLSA’s overtime requirement. Instead, in addition to earning at least the minimum amount stated above, the employee’s position and responsibilities must also satisfy one of the following tests.

**B. Additional Requirements – Duties Tests.** For those positions which meet the threshold salary requirements discussed above, there is a second step to analyzing whether any particular position is exempt from the FLSA. Such positions will only qualify as “exempt” under the FLSA if they additionally meet one of the following job duties tests.

#### 1. “Highly Compensated” Employees

“Highly compensated” employees are not entitled to overtime if: (1) they perform office or non-manual work; (2) they are paid a total annual compensation of at least \$107,432 for 52 weeks of work (including at least \$684 per week on a salary or fee basis); and (3) customarily and regularly perform any one or more of the exempt duties or responsibilities of an executive, administrative, or professional employee. 29 CFR §541.601(a) and (d). Per the DOL’s April 23, 2024 Final Rule, the salary-level threshold for “highly compensated” employees will also increase to \$132,964 per year (including at least \$844 per week on a salary or fee basis) effective July 1, 2024, and again on January 1, 2025, to \$151,164 per year (including at least \$1,128 per week on a salary or fee basis). Total annual compensation may also include commissions, nondiscretionary bonuses and other nondiscretionary compensation earned during a 52-week period, but does not include housing or meals reimbursements, medical or life insurance, contributions to retirement plans and the cost of other fringe benefits.

A high level of compensation is a strong indicator of an employee's exempt status, thus eliminating the need for a detailed analysis of the employee's job duties. As a result, a highly compensated employee will qualify as “exempt” if the employee customarily and regularly performs any one or more (but need not perform all) of the exempt duties or responsibilities of an executive, administrative or professional employee.

#### *The Executive, Administrative and Professional Duties Tests*

- i. **Executive** – to qualify for the executive employee exemption, the employee must: (1) have a primary duty of managing the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; (2) customarily and regularly direct the work of

two or more other employees (or the equivalent of two or more full-time employees); and (3) have the authority to hire or fire other employees or have particular weight given to suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees. 29 CFR §541.100(a)(2)-(4).

- ii. **Administrative** – to qualify as an administrative employee, the employee must: (1) have a primary duty of the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and (2) have a primary duty that includes the exercise of discretion and independent judgment with respect to matters of significance. 29 CFR §541.200(a)(2)-(3).
- iii. **Professional** – to qualify for the professional employee exemption, the employee must have a primary duty of performing office or non-manual work: (1) requiring knowledge of an advanced type in the field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction (the so-called “learned” professional); or (2) requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor (the so-called “creative” professional). 29 CFR §541.300(a)(2).

## 2. **Computer Software Employees**

Special rules apply for computer and information technology personnel. Under federal regulations, a computer employee will be exempt if, as mentioned above, they earn at least \$27.63 per hour (or at least \$684 per week on a salary or fee basis), and have a primary duty of: (1) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; (2) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system designs specifications; (3) the design, documentation, testing, creation or modification of computer programs related to machine operating systems; or (4) a combination of the above duties, the performance of which requires the same level of skills. 29 CFR §541.400(b). The salary-level threshold for computer software employees remains unchanged under the DOL’s April 23, 2024 Final Rule.

## 3. **First Responders**

There are also special rules regarding “first responders.” Significantly, safety employees who are “first responders” are not eligible for exemption under the executive, administrative or professional duties tests, and thus must be paid overtime as a general rule. Seventeen different safety occupations are eligible for overtime, regardless of pay level or rank, including: police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers, “and similar employees,” if these employees perform work such as “preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes...; pursuing, restraining and apprehending suspects...; preparing investigative reports; or other similar work.” 29 CFR



§541.3(b)(1). Similar to computer software employees, the DOL’s April 23, 2024 Final Rule also has no effect on “first responders.”

Typically, police and fire chiefs have been deemed exempt employees and therefore not entitled to overtime pay. Whether other, high ranking police or fire personnel are similarly exempt from overtime pay requirements is analyzed on a case-by-case basis.

#### **4. Teachers & Academic Administration Professionals**

Teachers and academic administration professionals are also exempt from the overtime requirements if they: (1) are compensated on a salary or fee basis at a rate of not less than \$684 per week, or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which employed; and (2) have primary duties of performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision thereof. 29 CFR §541.204(a)(1) and (2). That being said, the DOL’s April 23, 2024 Final Rule also will not impact the salary-level threshold for teachers and academic administration professionals.

#### **5. Unpaid Suspensions of Exempt Employees**

Employers are allowed to impose suspensions without pay of one or more full days for exempt employees, without jeopardizing the employee’s “exempt” status, for violations of: (1) written workplace policies that are applicable to all employees; or (2) major safety rules. 29 CFR §541.602(b)(4) and (5). In contrast, “partial day” suspensions without pay may impact an employee’s “exempt” status, so care should be taken when imposing unpaid suspensions as a disciplinary sanction against exempt employees.

**Conclusion.** The above summary is general in nature and is intended to alert you to the basic regulations governing employee-status under the Fair Labor Standards Act. Employers are urged to consider an employee’s particular duties and level of responsibility, consistent with the Duties Tests described above, before making any final determination with respect to an employee’s entitlement to overtime wages, and to consult with counsel as necessary with respect to same.

Please contact KP Law Attorneys [Darren Klein](#) or [Michele Randazzo](#) at 617.556.0007 with any questions.

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