

DOL WHD Final Rule Defining and Delimiting the Overtime Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees

April 26, 2024

The Department of Labor’s (DOL) Wage and Hour Division (WHD) [published a final rule](#) (referred to as the “Overtime Rule”) to revise its Fair Labor Standards Act (FLSA) regulations at 29 CFR 541 implementing the exemptions from minimum wage and overtime pay requirements for executive, administrative, professional, outside sales, and computer employees. DOL has also issued a series of related [Frequently Asked Questions](#) regarding the final rule. The final rule is effective beginning July 1, 2024.

I. Background

The FLSA guarantees a minimum wage and overtime pay at a rate of not less than one and one-half times an employee’s regular rate for hours worked over 40 in a workweek. Under current regulations put in place by the Trump Administration, workers may be exempt from this overtime requirement if:

- (1) They are paid a salary, meaning a predetermined and fixed amount that is not subject to reduction because of variations in the quality or quantity of work performed (the “salary basis test”); and
- (2) They are paid at least a specified weekly salary level—called a standard salary level—which is \$684 per week (the equivalent of \$35,568 annually for a full-year employee) in the current regulations (the “salary level test”); and
- (3) They primarily perform executive, administrative, or professional duties (the “duties test”).

II. Final Rule

Under the final rule, the Biden WHD is increasing standard salary level below which workers must be paid overtime regardless of their duties. Workers above this standard salary level threshold may be deemed exempt executive, administrative employees if they meet the duties tests. Workers paid above a highly compensated employees (HCE) level may be exempt from overtime on the basis of less rigorous tests for determining if they are exempt executive, professional or administrative employees. Specifically, employees whose earnings are above the threshold for the HCE level will be subject to a minimal duties test under which the employee must only “customarily and regularly perform any one or more of the exempt duties or responsibilities of an executive, administrative, or professional employee.” The final rule emphasizes that “the Department is not making substantive changes to any provisions related to the salary basis or job duties tests.” It is only updating the salary levels.

a. Standard Salary Level

Under the final rule, the Biden WHD is updating the standard salary level threshold for the overtime exemption so that beginning July 1, 2024, and using the existing methodology from the 2019 final rule setting the standard salary threshold at the 20th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Regions (the South), the Biden WHD is raising the existing threshold from \$684 per week to \$844 per week (the equivalent of raising it from \$35,568 per year to \$43,888 per year).

Beginning January 1, 2025, the WHD will implement a new methodology for calculating the standard salary level threshold, which sets the standard salary level at the 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region (the South), resulting in a salary level of \$1,128 per week (the equivalent of \$58,656 per year).

The WHD notes that employers may use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the standard salary test requirement, provided that such payments are paid on an annual or more frequent basis. Such bonuses include, for example, nondiscretionary incentive bonuses tied to productivity or profitability (e.g., a bonus based on the specified percentage of the profits generated by a business in the prior year).

b. Highly Compensated Employees Level

The final rule also includes a revised HCE level threshold, which beginning on July 1, 2024, and using the existing methodology from the September 2019 final rule, will increase from \$107,432 to \$132,964 in annual compensation. Then, beginning January 1, 2025, the compensation level will be set at the annualized weekly earnings of the 85th percentile of full-time salaried workers nationally, resulting in a compensation level of \$151,164.

Per the final rule, the WHD believes that this methodology results in an HCE level that is low enough not to restrict unduly the use of the HCE test for employers in low-wage regions and industries, and high enough to guard against the unintended exemption of workers who are not bona fide executive, administrative, or professional employees in higher-income regions and industries.

c. Automatic Updates

The WHD is also introducing a mechanism to “maintain the effectiveness” of the final rule by automatically updating the standard salary level and HCE level thresholds every three years beginning July 1, 2027. The purpose of these automatic updates is to align the final rule’s thresholds with shifts in worker salaries and to provide employers with a predictable timetable for future adjustments. As a result, the WHD will automatically update the standard salary level by adjusting it every three years, beginning on July 1, 2027, to remain at the 35th percentile of weekly earnings of full-time non-hourly workers in the lowest-wage Census Region. Additionally, the HCE test’s total annual compensation requirement will also be reset every three years at the annualized weekly earnings of the 85th percentile of full-time non-hourly workers nationally.

In the final rule, the WHD notes that if there are changes in the methodologies for determining the standard salary level and HCE level thresholds (which, beginning January 1, 2025 will be the 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region for the standard salary level and the 85th percentile of full-time non-hourly workers nationally for the HCE level), the Department will effectuate these changes through future notice-and-comment rulemaking. Additionally, to provide employees and employers with advance notice of the updated thresholds, DOL will publish a *Federal Register* notice describing the new earnings levels at least 150 days prior to the date of a scheduled update (i.e., July 1, 2027, July 1, 2030, July 1, 2033, etc.). Moreover, to afford DOL with added flexibility to adjust thresholds based on unexpected circumstances, the final rule includes a provision allowing the WHD to temporarily delay a scheduled update where “unforeseen economic or other conditions warrant.”

DOL has issued the below table to provide clarity on the standard salary level and HCE level thresholds:

DATE	STANDARD SALARY LEVEL	HIGHLY COMPENSATED EMPLOYEE TOTAL ANNUAL COMPENSATION THRESHOLD
Before July 1, 2024	\$684 per week (equivalent to \$35,568 per year)	\$107,432 per year, including at least \$684 per week paid on a salary or fee basis.
July 1, 2024	\$844 per week (equivalent to \$43,888 per year)	\$132,964 per year, including at least \$844 per week paid on a salary or fee basis.
January 1, 2025	\$1,128 per week (equivalent to \$58,656 per year)	\$151,164 per year, including at least \$1,128 per week paid on a salary or fee basis.
July 1, 2027, and every 3 years thereafter	To be determined by applying to available data the methodology used to set the salary level in effect at the time of the update.	To be determined by applying to available data the methodology used to set the salary level in effect at the time of the update.

III. Compliance with Decision Invalidating the Obama-era 2016 Overtime Rule

In 2016, the Obama-era DOL issued a final rule increasing the standard salary level to the 40th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region. The U.S. District Court for the Eastern District of Texas (Court) issued an order preliminarily enjoining DOL from implementing and enforcing this final rule because, among other things, the threshold was set so high that it rendered the duties test moot. The court said that “with the Final Rule, the Department exceeds its delegated authority...by raising the minimum salary level such that it supplants the duties test....This significant increase to the salary level creates essentially a de facto salary-only test.” The court also objected to the 2016 final rules automatic indexing of the salary thresholds based on inflation.

The Biden WHD says that by establishing the standard salary level threshold at the 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region, it avoids the issues the court raised with the 2016 final rule.

IV. Economic Analysis

The WHD estimates that in “Year 1” after the rule becomes effective, approximately 1 million employees who earn at least \$684 per week but less than \$844 per week will be impacted by the initial update to the standard salary level, and approximately 3 million employees who earn at least \$844 per

week but less than the new standard salary level of \$1,128 per week will be impacted by the subsequent application of the new standard salary level beginning January 1, 2025. Overall, the WHD estimates that total annualized direct employer costs over the first 10 years will be \$803 million with a 7 percent discount rate. DOL also observes that the rule will give employees higher earnings in the form of transfers of income from employers to employees. To this end, DOL estimates annualized transfers will be \$1.5 billion, with a 7 percent discount rate.

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