

## More On New Rules For White-Collar Exemptions: Strategies To Consider

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[Last week, we highlighted](#) the **Department of Labor's (DOL)** new proposed amendments to the “white-collar” exemption regulations. As the proposed rules move closer to becoming final this summer, with an effective date 60 days later, we take the opportunity to explain further what these new regulations will mean for employers.

As we suggest in greater detail below, employers would be wise to take several steps before the new regulations become effective, including auditing payroll records, reviewing timekeeping systems, and preparing to discuss changes with employees.

Under the current regulations, employers must pay overtime to all employees at one and a half times their regular rate, unless employees are exempt from the **Fair Labor Standards Act's (FLSA)** overtime requirements. The white-collar exemptions exclude certain executive, administrative, and professional employees depending upon the employees' duties and salaries.

Currently, to be exempt, an employee generally must:

- Be salaried, meaning that they are 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”)
- Be paid at least a specific salary threshold, which is \$455 per week, or the equivalent of \$23,660 annually for a full-year employee (the “salary level test”)
- Primarily perform executive, administrative, or professional duties, as provided in the DOL's regulations (the “duties test”)

Certain employees are not subject to either the salary basis or salary level tests, such as doctors, teachers, and lawyers. In its first draft of the proposed new regulations published last year, the DOL [did not make specific proposals](#) to modify the standard duties tests, but it did seek comment on whether the standard duties tests are working as intended to screen out employees who are not bona fide white-collar exempt employees.

Under the new overtime rules likely to be adopted, the minimum weekly salary will be raised to \$970 per week, or \$50,440 annually. The DOL also is proposing to set the highly compensated employee (HCE) annual compensation level equal to the 90th percentile of earnings for full-time salaried workers, or \$122,148 annually. Further, in order to prevent the salary level requirements from again becoming outdated and ineffective between rulemakings, the DOL is proposing to automatically update the salary and HCE compensation levels on an annual basis.

### **Recommendations for employers in light of the coming rules:**

- **Audit payroll records.** Consider whether the new thresholds affect employees' classifications as exempt. Determine whether salary adjustments are appropriate or whether the market value for a job currently classified as exempt will not be close to the new salary level test requirements. In the latter scenario, reclassification of the position may become necessary.
- **Review timekeeping systems.** Many employees who were previously exempt may now fall into the non-exempt category. Analyze whether time tracking systems can be expanded to track hours for these employees.
- **Discuss changes.** Many employees are keenly aware of their classifications. Employees should be told about these changes so they are ready when the rule becomes effective, particularly if they are moving from an exempt to a non-exempt classification.

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