

# NEW DOL RULE EXPANDS OVERTIME PAY

The Department of Labor (DOL) has finalized its new rule expanding eligibility for overtime pay to millions of workers. Effective July 1, 2024, certain salaried workers earning less than \$43,888 per year (or \$844 per week) will become eligible for overtime pay. This initial threshold will increase to encompass employees making less than \$58,656 (\$1,128 per week) on Jan. 1, 2025.

Once fully implemented, the rule is expected to impact approximately 4 million workers and their employers.

**The EAP Exemption:** The Fair Labor Standards Act (FLSA) exempts employees working “in a bona fide executive, administrative, or professional capacity” from overtime pay provided that the employee: **(1) be paid a salary; (2) be paid a specified weekly salary level; and (3) perform mostly executive, administrative, or professional duties as defined in the DOL’s regulations.**

Highly compensated employees paid a salary who earn above \$132,964 (including at least \$844 per week paid on a salary and fee basis) and satisfy the DOL’s minimal duties test are also eligible for overtime pay and will be impacted by the DOL’s new rule. This threshold will rise to \$151,164 (at least \$1,128 per week paid on a salary and fee basis) by Jan. 1, 2025. The salary levels triggering overtime pay for all employees can be found [on the DOL website](#).

**Compliance with the New Rule:** Starting on July 1, 2024, employers will be required to pay employees who meet the above criteria one and one-half times their regular rate of pay for hours worked in excess of 40 hours per week. Employers should be aware that with certain exceptions, bonus payments must also be included in the employee’s regular rate of pay for the purpose of calculating overtime.

Further, state laws may be more restrictive than the DOL rules and employers should defer to the standard that will provide the higher rate of pay.

**Forms of Compensation Included in Salary Calculation:** In addition to an employee’s base salary, employers should be aware that nondiscretionary bonuses, incentives and commissions, even when paid annually, may count towards annualized minimum salary requirements exempting employees from overtime. Such payments may be counted as part of the employee’s salary up to 10% of the minimum annual threshold (e.g., \$4,388.88 under the new July 1,

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2024, rule). However, this provision does not apply to highly compensated employees.

Further, an employer may elect to make a final “catch-up” payment on the first pay period following the end of the 52-week salary period in order to achieve employee exempt status. This payment counts as compensation to the prior year’s salary even when made in a new year.

**Future Concerns:** Looking ahead, the new DOL rule is similar to the 2016 rule proposed by the Obama administration, which would have raised the overtime pay threshold to \$47,476 per year. That proposal was abandoned after [21 states sued the DOL](#). In the event a similar challenge is raised, the Supreme Court may be open to eliminating the salary threshold requirement entirely, with Justice Brett Kavanaugh recently suggesting: “The Act focuses on whether the employee performs executive duties, not how much an employee is paid or how an employee is paid. So it is questionable whether the Department's regulations—which look not only at an employee's duties but also at how much an employee is paid and how an employee is paid—will survive if and when the regulations are challenged as inconsistent with the Act.” [\[1\]](#)

If you have any questions regarding the final rule, please contact your regular AT lawyer or one of the listed authors.

[\[1\]](#) *Helix Energy Sols. Grp., Inc. v. Hewitt*, 598 U.S. 39, 67 (2023).