

LABOR DEPARTMENT'S NEW OVERTIME RULE LIKELY COMING SOON: YOUR 8-STEP PLAN TO PREPARE

Insights
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More of your employees may be eligible for overtime pay under a new rule that is likely to be finalized in April and could take effect soon. As proposed in August, the Labor Department intends to significantly raise the exempt salary threshold for the so-called “white-collar” exemptions from about \$35K to about \$55K – meaning your workers will need to earn at least the new threshold to even be considered exempt from OT pay. The White House budget office recently announced that it is reviewing the rule, which is the final step before it is shared with the public. Although the final rule will likely face legal challenges, you can’t bank on a court halting its implementation. Moreover, the higher exempt salary threshold is expected to impact 3.6 million workers, which means you should start planning now. Here’s an eight-step action plan to help you prepare as the rule is finalized.

[Editor’s Note: The final rule was [cleared by the White House](#) on April 10, meaning the details should be made available to the public soon. Check back for updates.]

1. Review Pay Practices and Prepare for Compliance

Under the federal Fair Labor Standards Act (FLSA), employees generally must be paid an overtime premium of 1.5 times their regular rate of pay for all hours worked beyond 40 in a workweek — unless they fall under an exemption. One of the criteria to qualify for an exemption is earning a weekly salary above a certain level.

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Currently, the salary threshold for exempt employees is \$684 a week (\$35,568 annualized) for the administrative, executive, and professional exemptions — collectively known as the “white-collar” exemptions. The DOL’s proposal, if finalized in its current form, would raise the rate to \$1,059 a week (\$55,068 annualized) or high depending on cost-of-living adjustments. The proposed rule would also automatically update the salary threshold every three years, which means you’d have to adjust your budget accordingly. These are big changes that will require some planning if you have exempt employees under the white-collar exemptions who earn less than the proposed amount.

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2. Work Through Your Decision Tree

Start by creating a list of your exempt employees who currently earn between \$35,568 and \$55,068 a year. You will have to decide whether to raise their salary to meet the new threshold or convert them to non-exempt status. If you decide to convert them, there are many considerations to take into account and you should work with legal counsel to review:

- how much you will increase pay for affected employees;
- how you’ll calculate the “regular rate”;
- how you’ll handle incentives and bonuses;
- how you will track working hours; and
- how benefits will be affected.

Additionally, you may want to start tracking their actual hours worked now to help you understand the potential impact of converting to non-exempt status as those individuals will need to be paid overtime.

3. Consider the Impact on Employee Morale

Reclassifying employees to non-exempt could have a negative impact on morale. Many employees associate prestige with being classified as an exempt-salaried employee, they like the flexibility that comes with being salaried, and they don’t want to track and record their hours worked. Therefore, employees may view a switch to non-exempt status as a demotion.

4. Plan to Provide Advance Notice of Changes

In addition to developing communications focused on employee relations and morale, you'll want to provide a written communication to each employee about the specific changes to their compensation and what new responsibilities come with the changes, such as timekeeping and record keeping.

5. Review Your Policies on Company Equipment and Personal Devices

Do you have different policies for exempt and non-exempt employees when it comes to issuing company equipment and using personal devices? Exempt employees may have more leeway to use company laptops or their own personal devices – such as smartphones – to conduct business while traveling or outside of their regular office hours. You will have to determine how to address these policies moving forward.

6. Develop a Training Plan for Managers and Newly Non-Exempt Employees

We highly recommend that you provide detailed training to newly reclassified employees and their managers prior to the changes taking effect. There's a lot to learn. The specifics may vary from business to business, but you'll want to cover scheduled hours, OT approval policies, timekeeping procedures, rules about meal and rest breaks, and more.

7. Ensure Exempt Employees Meet the Duties Test

Besides the salary test, exempt employees also need to satisfy certain duties requirements. Neither their job title nor job description alone determines whether an employee qualifies for a white-collar (or any other) exemption. This is a good opportunity to ensure they meet these standards as well.

8. Review Applicable State Laws

It is important to remember that other jurisdictions can have higher, stricter, or different wage and hour requirements. For example, some states *already* have a higher salary threshold for the white-collar exemptions than the FLSA's \$684 per week.

Conclusion

[You can click here for a more detailed compliance plan and background about the federal overtime rule.](#) We will continue to monitor developments from the DOL's Wage and Hour Division, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Wage and Hour Practice Group](#).