

**NORTH RISK PARTNERS**  
 WAGNER, FALCONER & JUDD, LTD.  
**DOL'S NEW OVERTIME RULE:  
 WHAT YOU NEED TO KNOW**  
 JULY 2024  
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**AGENDA**

- Intro and Background of Rule
- Key Changes
- Duties Test
- Legal Challenges
- Steps to Take for Compliance

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**PRESENTER**

**Janell Stanton**  
 HR Attorney  
 WAGNER, FALCONER & JUDD, LTD.

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## BACKGROUND

Non-exempt

Exempt

- Must comply with all the minimum wage and overtime requirements.

- Not covered by the minimum wage and overtime requirements.
- Three-part test:
  - Paid on a salary basis
  - At least the **salary threshold**
  - Meet the duties test

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## BACKGROUND

Salary Threshold Through the Years

**1938:** The Fair Labor Standards Act (FLSA) was enacted, establishing a minimum wage and overtime pay, but it did not set a specific salary threshold for exempt employees.


**1940:** The first salary threshold was set. Executive and administrative employees had to earn at least \$30 per week (\$1,560 annually).

**1975:** The salary threshold was set at \$155 per week (\$8,060 annually) for executive and administrative employees and \$170 per week (\$8,840 annually) for professional employees.

**2004:** The DOL raised the salary threshold to \$455 per week (\$23,660 annually) for all exempt employees (executive, administrative, and professional).

**2016:** An update was proposed to raise the threshold to \$913 per week (\$47,476 annually), but it was blocked by a federal judge and never went into effect.

**2019:** The DOL increased the salary threshold to \$684 per week (\$35,568 annually), effective January 1, 2020.

  
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## BACKGROUND

ECONOMIC SNAPSHOT


### Salaried workers' right to overtime pay has eroded dramatically

Share of salaried workers covered by the salary threshold in 1975 and 2013



Year	Share of salaried workers covered by the salary threshold
1975	65%
2013	11%

Note: A salaried worker is a worker who is paid on a regular schedule and receives a guaranteed minimum amount on each pay date regardless of hours worked.  
Source: Author's analysis of Current Population Survey Outgoing Rotation Group microdata

  
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**DUTIES TEST**

- No changes
- It's more important than ever to do a check-up of your exempt employees to ensure proper classification
- Remember:
  - The analysis must be based on the employee's job duties, not job title or even job description
  - The employee must *primarily* perform exempt duties (75-80% of working time)

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**CURRENT LEGAL CHALLENGES**

- *Flint Avenue, LLC v. Su*, Northern District of Texas
- *State of Texas v. DOL*, Eastern District of Texas
- *Plano Chamber of Commerce v. Su*, Eastern District of Texas
- *Mayfield v. DOL*, Fifth Circuit (addressing the DOL's 2019 final rule)

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**IMPACT ON EMPLOYERS**

**Financial Impact:** DOL estimates that the rule change will create an additional 4 million non-exempt employees eligible for overtime in the US - impact will result in a transfer of \$1.5 billion in wealth from employers to employees in the first year

**Administrative Impact:** Changes needed in payroll and HR practices

**Legal Compliance:** Importance of adhering to the new regulations to avoid penalties. Risks include lawsuits and liability for back wages for up to 3 years, liquidated damages, and attorney's fees

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**NEXT STEPS**

**Step 1:** Identify exempt employees that are below the July 1 increased threshold and January 1 increased threshold  
**Step 2:** Verify that exempt employees' actual job duties meet one of the exemption duties tests and that they are paid on a salary basis  
**Step 3:** Decide whether to increase pay or reclassify as nonexempt  
**Step 4:** Update policies including requiring prior authorization before working overtime



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**NEXT STEPS**

**Employee concerns**  
 Employees may have a variety of concerns over being reclassified.

- > Is this a demotion?
- > Habits are hard to change.
- > Will I still be able to advance my career?
- > Loss of flexibility.
- > Will I make less money overall?



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**NEXT STEPS**

To minimize morale issues in your company and to avoid paying overtime for time worked that you did not approve, it is important to set the standards for newly nonexempt employees in a way that they understand and accept without feeling they have been demoted or punished.

1. Train your managers.
2. Explain why the change is taking place.
3. Pay for every hour worked.
4. Explain the new timekeeping procedures.
5. Regular communication.
6. Appoint someone other than the employee's manager as a point person for communication.
7. Be proactive.



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**QUESTIONS?**



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