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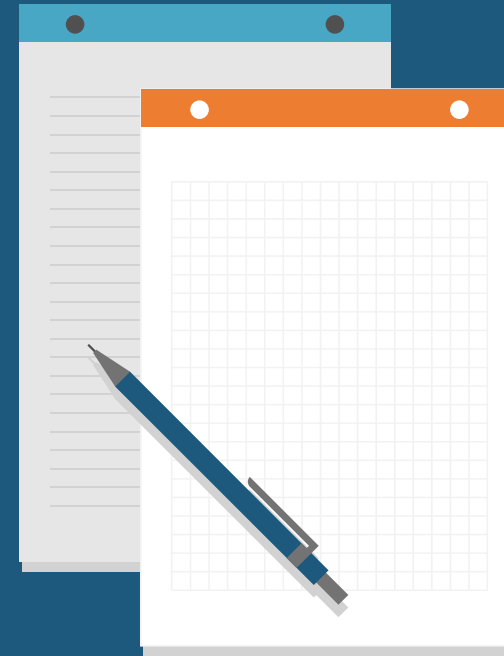
DOL'S NEW OVERTIME RULE: WHAT YOU NEED TO KNOW

JULY 2024

NORTH RISK WEBINARS | 2024

AGENDA

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



PRESENTER



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WAGNER, FALCONER & JUDD, LTD.

BACKGROUND

Non-
exempt

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

Exempt

- 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

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

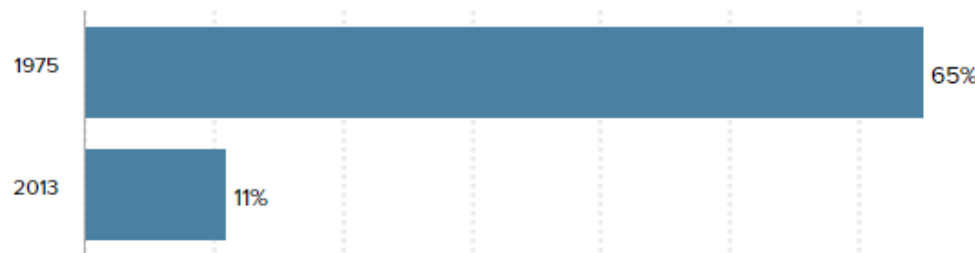


Chart Data

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

Economic Policy Institute



KEY CHANGES

New Salary Levels

Standard Salary Level:

- **Before July 1, 2024:** \$684 per week (\$35,568 per year)
- **From July 1, 2024:** \$844 per week (\$43,888 per year)
- **From January 1, 2025:** \$1,128 per week (\$58,656 per year)

Highly Compensated Employee (HCE) Total Annual Compensation:

- **Before July 1, 2024:** \$107,432 per year
- **From July 1, 2024:** \$132,964 per year
- **From January 1, 2025:** \$151,164 per year

Future Updates:

Starting July 1, 2027, and every three years thereafter, the salary thresholds will be automatically updated based on current earnings data to reflect economic changes.

KEY CHANGES

Who will become eligible for overtime pay under the final rule?

Date:	Most salaried workers earning less than:
Currently	\$684/week (\$35,568/year)
July 1, 2024	\$844/week (\$43,888/year)
Jan. 1, 2025	\$1,128/week (\$58,656/year)

Starting July 1, 2027, the eligibility thresholds will be updated every three years, based on current wage data.

dol.gov/OT



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KEY CHANGES

The DOL rules set the floor, not the ceiling, regarding employee overtime protections

Several states have their own, higher salary thresholds for exemption (and differing duties tests)

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)

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

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?

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.**

QUESTIONS?



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