



## New DOL Rule: Higher Salary Required to Meet DOL Overtime Exemptions

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Today, the U.S. Department of Labor issued a Final Rule to go into effect on January 1, 2020 that will increase the salary threshold for the Executive, Administrative, and Professional (“EAP”) exemptions under the Fair Labor Standards Act (“FLSA”). The Final Rule raises the salary threshold to qualify for an EAP exemption from an annual salary of \$23,660.00 (or \$455 per week) to **\$35,568.00 per year (or \$684.00 per week)**. It also increases the so-called “Highly Compensated Worker” (“HCW”) salary level from \$100,000 to \$107,432. As many employers will recall, these salary levels were last updated fifteen years ago in 2004. The DOL issued a final rule in 2016 to increase the salary levels for EAP and HCW to \$47,476 and \$147,000, respectively, but that rule was blocked by a federal court and never implemented.<sup>[1]</sup> It is not anticipated that there will be another judicial challenge to this new Final Rule.

As a reminder, absent the availability of an EAP or HCW exemption, employees must be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek. Once the Final Rule goes into effect in January 2020, nearly one million employees who are currently exempt from overtime will no longer be exempt, and employers will be required to pay them overtime, unless the employer decides to increase their salaries to meet the new DOL threshold.

Again, it is important to remember that the salary level requirement is just one of several factors in determining whether employees fall under any of the EAP exemptions. In order for an exemption to apply, an employee must also satisfy one of the EAP or the HCW duties tests. For example, under the executive exemption, employers must also ensure that the employee’s primary duty is managing the business or managing a customarily recognized department or subdivision of the business, that the employee regularly directs the work of at least two or more other full-time employees, and that the employee’s recommendations as to hiring, firing, advancement, promotion, or other change of status of other employees are given particular weight. In addition, exempt employees must be paid on a salaried basis, i.e. a fixed amount each week, month, or year, irrespective of the number of hours worked in that time period.

It is also important for employers to be reminded that state laws may impose broader overtime compensation eligibility for employees. Employers throughout the country should take measures to

ensure that their employees are properly classified, especially in light of the new salary threshold, and either change the exemption status of their employees, or raise affected employees' salaries accordingly. Now is a great time for employers to audit their employee job classifications to ensure compliance with the DOL overtime rules.

[1] For more information on these earlier rule proposals and judicial action to block the 2016 rule's implementation, please see the following:

- [David Burton Analyzes DOL's Overtime Rule Appeal for Law360](#)
- [Federal Court Blocks Dept. of Labor "Overtime Rules" From Taking Effect on December 1, 2016 – So, Now What?](#)
- [One Year Later: The DOL's "New" Overtime Rules Are Finally On The Way – Get Ready!](#)

## Related People

- Yiorgos L. "George" Koliopoulos – 757.473.5320 – [gkoliopoulos@williamsmullen.com](mailto:gkoliopoulos@williamsmullen.com)
- Laura D. Windsor – 804.420.6466 – [lwindsor@williamsmullen.com](mailto:lwindsor@williamsmullen.com)

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