

DOL Increases Salary Level for FLSA Overtime Exemption

May 14, 2024



Community Action Agencies (CAAs) will soon need to consider the exempt status of their employees and eligibility for overtime pay following recent regulatory changes issued by the U.S. Department of Labor (DOL). On April 26, 2024, DOL published a Final Rule on [Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees](#) (the “Final Rule”). Key changes in the Final Rule include: (i) on July 1, 2024, raising the salary level above which certain employees are exempted from federal overtime pay requirements, from \$684/week to \$844/week; (ii) on January 1, 2025, revising the methodology used to determine the salary level and raising it to \$1,128/week; and (iii) establishing, as of July 1, 2024, automatic updates to the salary level every 3 years. The effective date for the Final Rule is July 1, 2024. The agency estimates an additional 1 million workers will become eligible for overtime pay in the initial update in July, and an additional 3 million workers will become eligible for overtime pay in the subsequent update in January.

EAP Exemption and Proposed Updates

EAP Exemption Overview

In general, the Fair Labor Standards Act (FLSA) requires that employees be paid at least 1.5 times their regular rate of pay for each hour worked over 40 in a workweek. However, an exemption from this rule exists for certain executive, administrative, and professional employees (the “EAP exemption”), provided they satisfy the following three-part test:

1. The employee is paid a predetermined and fixed salary regardless of the amount or quality of work performed (the “salary basis test”);
2. The salary meets a minimum amount or threshold (the “salary level test”); and
3. The employee’s job duties primarily involve executive, administrative, or professional duties as defined under the FLSA (the “duties test”).

If an employee meets all parts of this three-part test, they are considered “exempt,” and their employer does not need to provide overtime pay to them.

Changes in the Final Rule

Increase Salary Level. In the Final Rule, DOL increases the minimum salary threshold needed to satisfy the salary level test in two increments. Specifically, on July 1, 2024, it raises the threshold from the current level of \$684/week (\$35,568/year) to \$844/week (\$43,888/year). As of July 1, 2024, those employees who are currently exempt and earning less than \$844/week would no longer satisfy the EAP exemption test and would be eligible for overtime pay.

On January 1, 2025, the Final Rule raises the threshold to \$1,128/week (\$58,656/year). As of January 1, 2025, those employees who are currently exempt and earning less than \$1,128/week no longer satisfy the EAP exemption test and are eligible for overtime pay. The reason for the increase at this time is because the DOL is revising its methodology to set this new salary level at the 35th percentile of weekly earnings



of full-time non-hourly workers in the lowest-wage Census Region (currently the South), up from the current methodology set at the 20th percentile.

Increase HCE Compensation Level. The Final Rule increases the compensation threshold for “highly compensated employees” (HCEs). This exemption differs from the EAP exemption discussed above. An HCE must primarily perform office or non-manual work, satisfy a more lenient duties test, and earn at least the minimum HCE compensation threshold, which includes commissions, nondiscretionary bonuses, and other nondiscretionary compensation. The Final Rule increases that compensation threshold from its current level of \$107,432/year to \$132,964/year as of July 1, 2024. As of January 1, 2025, the Final Rule increases the threshold to \$151,164/year, which reflects the implementation of the DOL’s new methodology. This new methodology uses annualized weekly earnings of the 85th percentile of full-time non-hourly workers nationally, up from the current methodology set at the 80th percentile.

Automatically Adjust Salary and Compensation Levels. The Final Rule implements automatic adjustments to the EAP exemption and HCE salary and compensation thresholds. DOL will adjust these levels every 3 years, as of July 1, 2024, pursuant to the current methodology. The first adjustment will take effect as of July 1, 2027. Under the Final Rule, DOL intends for the triennial updates to use the new methodology adopted on January 1, 2025, the 35th and 85th percentile standards referenced above. This differs from the current rule, which requires DOL to engage in rulemaking before increasing the EAP exemption and HCE salary and compensation levels.

Extend New Salary Levels to U.S. Territories. The Final Rule chose not to address the U.S. Territories of Puerto Rico, Guam, the U.S. Virgin Islands, and the CNMI. DOL will address these aspects of its proposal in a future final rule.

Recent History Around the Final Rule

The Final Rule is DOL’s latest attempt to update overtime pay-related requirements, including the EAP salary level. In 2016, the Obama administration published a Final Rule that increased the threshold from \$455/week to \$913/week, and revised the methodology for determining the salary threshold to the 40th percentile of weekly earnings of full-time non-hourly workers in the lowest-wage Census Region. It also required automatic updates to the salary threshold every 3 years. That rule was challenged in court and blocked, and eventually struck down on the basis that DOL had exceeded its authority to implement such a large salary level increase that greatly diminished the impact of the duties analysis on the test.

In 2019, the Trump administration published a Final Rule that contained a more moderate increase in the salary threshold from \$455/week to its current level of \$684/week, using the same methodology that has been in place since 2004 – 20th percentile of weekly earnings of full-time non-hourly workers in the lowest-wage Census Region. The revisions also did not provide for automatic adjustments.

The Final Rule updates the EAP salary threshold to \$844/week on July 1, 2024, based on the methodology used in the DOL’s 2004 and 2019 updates to the salary level (the 20th percentile).



The January 1, 2025, salary threshold increase to \$1,128/week is based on DOL's newly adopted methodology (the 35th percentile). While this represents an increase from the percentiles used in 2004 and 2019, it remains lower than the 2016 update to the methodology, which was eventually struck down. DOL is attempting to strike a balance between the higher 2016 salary level, which could have resulted in larger numbers of employees who perform mostly EAP duties being classified as non-exempt, and the relatively low 2004 and 2019 salary levels, which resulted in employees who perform significant non-exempt duties being exempted from eligibility for overtime pay.

Potential Impacts

CAPLAW is in the process of updating its previously issued resources addressing changes to the Overtime Rule to reflect the Final Rule's new requirements. The resources will discuss the impact on CAAs, such as more employees qualifying for overtime, reclassification of workers, budgetary issues, employee time tracking, and the automatic increase to the salary level test threshold every 3 years. These updated resources will be issued prior to CAPLAW's May 28, 2024, webinar on the Final Rule.

Next Steps

Recent history suggests that a Final Rule could face legal challenges that delay or ultimately block implementation. Partly in anticipation of these challenges, DOL intends for each of the changes in the Final Rule to be severable. This means that if a court finds any provision of the Final Rule to be invalid or unenforceable, all other provisions and sections remain effective and operative. For example, if a court were to stay or delay the January 1, 2025, salary threshold change as it considers a challenge to the methodology underlying the increase, the initial July 1, 2024, salary threshold increase should remain in effect.

CAPLAW will host a webinar on May 28, 2024, at 1pm EST, to discuss the Final Rule, impacts the changes could have on CAAs, and any new developments related to its implementation. Please register [here](#) to attend this important session.

Additional Resources

[Final Rule - Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees](#)

[DOL Frequently Asked Questions – Final Rule: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees](#)

[DOL Guidance on Overtime Pay](#)

This resource was developed by Community Action Program Legal Services, Inc. ("CAPLAW") in the performance of an award from the U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Community Services (OCS), Award Number 90ET0505-01. Any opinion, findings, and conclusions, or recommendations expressed in these materials are those of the author(s) and do not necessarily reflect the views of, nor the endorsement by, OCS/ACF/HHS or the U.S. Government. For more information, please visit the ACF website, Administrative and National Policy Requirements.

The contents of this resource are intended to convey general information only and do not constitute legal advice. Any communication through this resource or through CAPLAW's website does not constitute or create an attorney-client relationship. If you need legal advice, please contact CAPLAW or another attorney directly.