

CLIENT ALERT

DOL Issues Final Rule on Earnings Thresholds for White Collar Exemptions

May 8, 2024

AUTHORS

Andrew Spital | Jill K. Grant | Nadia K. Raynes | Michael Tinti

The New Rule

On April 26, 2024, the U.S. Department of Labor (the “DOL”) published a Final Rule that increases the minimum earnings thresholds for the executive, administrative, or professional (“EAP”) exemptions and for the highly-compensated employee (“HCE”) exemption under the Fair Labor Standards Act. The Final Rule is scheduled to take effect on July 1, 2024.

The Final Rule increases the earnings thresholds in three phases:

- In Phase I, effective July 1, 2024, (i) the minimum salary threshold will increase from \$684 to \$844 weekly, or \$35,568 to \$43,888 annually, for the EAP exemptions; and (ii) the minimum total compensation threshold will increase from \$107,432 to \$132,964 annually for the HCE exemption.
- In Phase II, effective January 1, 2025, (i) the minimum salary threshold will increase from \$844 to \$1,128 weekly, or \$43,888 to \$58,656 annually, for the EAP exemptions; and (ii) the minimum total compensation threshold will increase from \$132,964 to \$151,164 annually for the HCE exemption.
- In Phase III, effective July 1, 2027, the EAP and HCE earnings thresholds will increase based on then-current earnings data and will automatically update every three years thereafter.

DOL Issues Final Rule on Earnings Thresholds for White Collar Exemptions

The Final Rule Is Likely To Face Legal Challenges

The Final Rule will likely face legal challenges, including as to the magnitude of the increases, the automatic updates, and whether the DOL has the authority to set any earnings thresholds at all. In 2016, the last time the DOL proposed somewhat comparably steep threshold increases, a federal court in Texas blocked them from being implemented. And while the current earnings thresholds, which were set in 2019, survived a legal challenge, that case is on appeal to the Fifth Circuit, and the 2019 increases were not as substantial as those in the Final Rule. Moreover, the Supreme Court is expected to issue decisions this term on administrative agency rulemaking that could render the Final Rule more vulnerable to attack.

Notably, in anticipation of legal challenges, the DOL has attempted to make the Final Rule severable. This means that a court could potentially block or invalidate some parts of the Final Rule but not others. For example, a court could allow Phase I to take effect, but invalidate Phases II and III, or, as another example, it could permit threshold increases for the HCE exemption but not the EAP exemptions.

Suggested Next Steps

Despite likely challenges to the Final Rule, employers with potentially impacted employees should begin an audit of their workforce soon in order to be prepared to comply by the deadlines. There are a number of compliance strategies, each with different economic, cultural, and administrative impacts, that should be carefully considered before selecting the best one for your business. It is important to consult with legal counsel throughout this process and to monitor any challenges to the Final Rule. Even if some or all of the Final Rule does not survive, it is a barometer for how much the DOL believes exempt employees, at minimum, should earn, and presents an opportunity for employers to review their exempt/non-exempt classifications. Employers should also be mindful that several states, including New York and California, have higher thresholds than those currently in place under federal law.

DOL Issues Final Rule on Earnings Thresholds for White Collar Exemptions

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

Andrew Spital

212-728-8756

aspital@willkie.com

Jill Grant

212-728-8774

jgrant@willkie.com

Nadia Raynes

212-728-3579

nraynes@willkie.com

Michael Tinti

212-728-3234

mtinti@willkie.com

Copyright © 2024 Willkie Farr & Gallagher LLP.

This alert is provided by Willkie Farr & Gallagher LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This alert may be considered advertising under applicable state laws.

Willkie Farr & Gallagher LLP is an international law firm with offices in Brussels, Chicago, Dallas, Frankfurt, Houston, London, Los Angeles, Milan, Munich, New York, Palo Alto, Paris, Rome, San Francisco and Washington. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our fax number is (212) 728-8111. Our website is located at www.willkie.com.