

Initial Analysis: DOL Overtime Final Rule and the Impact on Nonprofits

April 23, 2024

The U.S. Department of Labor (DOL) has released its [Overtime Final Rule](#) designed to update and revise overtime protections for millions of workers employed by nonprofits, for-profits, and governments. The final rule, set to start going into effect on July 1, 2024, increases the minimum salary level that white-collar employees must be paid to exempt them from overtime pay of time and half of wages for hours worked in excess of 40 in any week. The standard salary level will go from the current equivalent of \$35,568 per year to \$43,888 per year starting on July 1, and rise to nearly \$59,000 annually on January 1, 2025. The Labor Department is also raising the minimum salary level for “highly compensated employees” from \$107,432 per year to more than \$151,000 in two steps, and establishing a mechanism for automatically raising these salary levels in the future, starting in 2027.

The Overtime Final Rule will likely be challenged in court, as was an overtime rule published in 2016. The outcome of the litigation is unclear.

This memo describes DOL’s three proposed changes to its overtime pay rule, reviews the background of the law, and provides perspective on the impact on charitable nonprofits.

What’s Changing?

The Overtime Final Rule makes changes in three areas:

Standard Salary Threshold

1. Old Rule Adjusted: On July 1, the standard salary threshold goes up to \$844 per week/\$43,888 per year (from the current level of \$684 per week/\$35,568 per year). This is essentially an inflation adjustment of the level set by the Trump Administration in 2019.
2. New Rule Implemented: On January 1, 2025, the salary level then goes up again to \$1,128 per week or \$58,656 per year.
3. Beginning July 1, 2027, the salary threshold will be automatically adjusted for inflation every three years.

Highly Compensated Employee Total Annual Compensation Threshold

The Labor Department is also adjusting the special threshold for highly compensated employees, a threshold that reduces the level of needed scrutiny about the duties the individual employees must perform to be exempt.

1. Old Rule Adjusted: On July 1, the threshold for highly compensated employees is adjusted for inflation from the current level of \$107,432 per year to \$132,964 per year. This new rate also requires that the individual must be paid on a salary or fee basis of at least the new standard salary threshold (\$844 per week).
2. New Rule Implemented: Starting January 1, 2025, the threshold for highly compensated employees goes up to \$151,164 per year and requires that the individuals are also paid a minimum of \$1,128 per week on a salary or fee basis. The new, higher threshold in this category was originally proposed back in September at about \$144,000.
3. As with the standard salary threshold, the highly compensated employee salary threshold will be automatically adjusted for inflation every three years, beginning on July 1, 2027.

Automatic Adjustment

Finally, the new Overtime Rule includes a mechanism for the Department to adjust both the Standard Salary Threshold and Highly Compensated Employee Total Annual Compensation Threshold for inflation every three years. The next automatic adjustment will take effect on July 1, 2027.

Background

Under the Fair Labor Standards Act (FLSA), employees are entitled to wages at or above the federal minimum wage (currently set at \$7.25 per hour) and must be paid time and a half overtime for work after 40 hours in any work week. In enacting the federal wage and hour law, Congress exempted from these standards individuals employed in a “bona fide executive, administrative, or professional capacity” and left it up to the Secretary of Labor to define the terms of the exemption.¹ The exemption is commonly referred to as the “white collar” or executive, administrative, or professional (EAP) exemption.

Persons who are properly classified as executive, administrative, or professional employees are considered “exempt employees,” because they are exempt from the overtime pay requirements. All other employees are “non-exempt” and must be paid at least the minimum wage and overtime after 40 hours worked in a week.

¹ 29 U.S.C. Sec. 213(a)(1).

Satisfying Three Tests: Generally, employers have the burden of demonstrating that a worker is exempt from the overtime provisions by satisfying three tests:

1. The **salary basis test** requires that the employee be paid a predetermined salary, rather than on an hourly basis, and that the amount paid is not adjusted based on whether the person worked certain hours.
2. The **duties test** requires that the individual’s job duties must primarily involve executive, administrative, and professional duties as defined by the Labor Department regulations.
3. The **salary level test** -- which is the subject of the proposed regulations -- requires that an employee be paid at or above a minimum specified amount. That amount is currently set in regulations at \$684 per week, or \$35,568 per year, and requires regulatory action by the Department of Labor to change it.²

There is a special category in the regulations that exempts “highly compensated employees” from overtime pay requirements if their total annual compensation exceeds \$107,432 and they customarily and regularly perform at least one of the exempt duties or responsibilities of an executive, administrative, or professional employee.

The statute also provides that certain employees (for example, doctors, teachers, and lawyers) are automatically considered exempt and thus not subject to either the salary basis or salary level tests.

States have the power to set higher standards for non-exempt and exempt employees. Currently, 29 states have set minimum wage levels higher than the federal minimum wage of \$7.25 per hour.³ Likewise, some states, such as California, Maine, and New York, have set the salary level test at a higher amount than is set in current U.S. Department of Labor regulations.⁴

Is there a Nonprofit Exemption?

In its answers to Frequently Asked Questions, DOL states that there “is no exemption for nonprofit organizations under the FLSA or in the proposed rule.” The answer, however, goes on to confuse things by writing about charitable and other activities that may be considered as outside the coverage of the law.⁵ The DOL will treat an employer (enterprise) as covered by the

² Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA), Wage and Hour Division, U.S. Department of Labor, Revised September 2019. See also, [Classifying Employees Correctly](#), National Council of Nonprofits website.

³ [State Minimum Wage Laws](#), Wage and Hour Division, U.S. Department of Labor, updated July 1, 2023.

⁴ [Exempt Employees: Minimum Salary Requirements for 2023](#), *HR Newsletter*, ADP, Jan. 11, 2023.

⁵ FAQ #13, [Frequently Asked Questions](#), Wage and Hour Division, U.S. Department of Labor, posted Aug. 30, 2023; “Thus, the proposed rule may impact nonprofit organizations that have an annual dollar volume of sales or business done of at least \$500,000. In determining coverage, only activities performed for a business purpose are considered. Charitable, religious,

FLSA only if it has commercial sales of \$500,000 or more – a standard that most charitable nonprofits would not meet either by dollar volume or the nature of its activities. However, the Labor Department considers virtually every worker (individual) as covered by the wage and hour laws because their work causes them to engage in interstate commerce, including activities like sending and receiving mail, making out-of-state phone calls, and processing credit cards. In short, with rare exceptions, the workforces of charitable organizations are covered by the FLSA. This means the proposed changes to the overtime regulations are something all charitable nonprofits should note and consider submitting public comments expressing your views.⁶

Analysis and Nonprofit Perspective

Congress delegated to the U.S. Department of Labor the responsibility for regularly updating the rules governing which executive, administrative, and professional employees may be exempted from the overtime requirements under the Fair Labor Standard Act. The regulations were last updated in 2019 (effective January 1, 2020), and before that had remained unchanged from the 2004 revisions. In 2015-16, the Obama Administration engaged in rulemaking to raise the overtime salary level tests, but the published final rule was blocked by a federal court and did not go into effect.⁷

In its review of the decision-making process, DOL appears to have relied heavily on public comments from charitable nonprofit organizations. For instance, the Final Rule expressly rejects calls to create an exemption from the salary threshold either for the broad nonprofit sector or for specific subsectors. The Department of Labor expressly cites the comments of several organizations, including those of the National Council of Nonprofits, in rejecting a carve-out for some or all charitable nonprofits.

The DOL analysis of the Overtime Final Rule cites the public comments of several organizations that recommended a multiple-step phase-in of new salary thresholds. The staggered salary level adjustments – a lower rate on July 1, 2024, and the higher rate on January 1, 2025 – although faster than sought, is an acknowledgement of the economic realities nonprofits presented.

The Labor Department also acknowledges that the higher salary threshold will create

educational, or similar activities of organizations operated on a nonprofit basis where such activities are not in substantial competition with other businesses are not considered. Employees of employers that are not covered by the FLSA on an enterprise basis may still be entitled to its protections if they are individually engaged in interstate commerce.”

⁶ An historical note: The Fair Labor Standards Act, enacted in 1938, was one of the first workforce laws when federal pre-emption was a new concept. The FLSA ties federal authority over private workplaces by relying on the Commerce Clause of the Constitution, and thus requires a showing of impact on interstate commerce. It is for this reason that the FLSA doesn't determine coverage based on the number of employees, like more recent labor laws such as the Age Discrimination in Employment Act of 1967 (20 or more employees) and the Americans with Disabilities Act of 1990 (15 or more employees).

⁷ *Nevada v. U.S. Department of Labor*.

challenges for nonprofits, particularly those with government grants and contracts. It does not provide any solutions for these challenges, but the recognition can boost advocacy efforts to secure relief within the Office of Management and Budget and at grantmaking federal departments and agencies.⁸

Finally, DOL estimates that the Final Rule will convert 4.34 million nonprofit workers from exempt to hourly employees if their weekly earnings do not increase to the new salary levels. The Labor Department projects a total cost of \$44.8 million to nonprofit employers, at an average cost of \$1,777 per entity in the first year.

Additional Resources

- [Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees](#), Wage and Hour Division, Department of Labor, Apr. 23, 2024.
- [Final Rule: Restoring and Extending Overtime Protections](#), Department of Labor news release, Apr. 23, 2024.

⁸ See [Nonprofit Joint Comments](#) submitted by 13 national nonprofits to Labor Department and Office of Management and Budget Rulemakings, Nov. 2, 2023.