



## APRIL 2024 U.S. DEPARTMENT OF LABOR UPDATED OVERTIME RULES ARE VACATED

On April 23, 2024, the Department of Labor (DOL) issued a final rule updating the salary and compensation levels needed for workers to be exempt from overtime eligibility. On November 15, 2024, a federal judge in the Eastern District of Texas vacated (erased) this entire rule, parts of which generally had taken effect on July 1, 2024 (*State of Texas v. U.S. Dep't of Labor; Plano Chamber of Commerce v. U.S. Dep't of Labor*). (On June 28, 2024, one of the plaintiffs in the case, the State of Texas, succeeded in being granted an individual exemption by a federal court from the July 1 changes while the case advanced through the court process.) Although the Department of Justice, with DOL, could appeal this ruling while President Biden is still in office, the incoming Trump administration will likely abandon any appeal. Absent significant changes to the Fair Labor Standards Act by Congress, the [2019 regulations](#) remain in effect. However, unlike the April 2024 regulations, the 2019 regulations do not provide a mechanism to automatically update/increase salary thresholds on a regular basis; therefore, changes to employees' eligibility for overtime pay will be determined only through future rulemaking.

The DOL's policy justification for the April 2024 final rule was to increase overtime eligibility thresholds because the compensation levels were last updated on January 1, 2020. Since then, salaried workers in the U.S. economy have experienced a rapid growth in nominal wages, according to DOL. The [final rule](#) included the following major changes:

- (1) Starting July 1, 2024, using the prior methodology finalized in the 2019 regulations, the standard salary level would have been set at a \$844 per week (\$43,888 annually), impacting a total of 1.8 million employees initially – this would have represented a substantial increase from the current levels of \$684 per week (\$35,568 annually for a full year worker) up from \$455 per week (\$23,660 annually).
  - Note: Even though the July 1, 2024, increase was based on the prior 2019 regulations' methodology finalized in the first Trump administration, even this provision of the 2024 final rule is vacated. Given the timing of the November 2024 court ruling, workers who already experienced a compensation increase caused by the July 1, 2024, salary level update may find that their employer will voluntarily maintain this increase for employee relations/attrition reasons, even though technically the employer is no longer required by federal law to honor the salary level.
- (2) Starting January 1, 2025, using the updated methodology finalized in these final regulations, the standard salary level will use the 35th percentile of earnings of full-time salaried workers in the lowest-wage Census Region (currently the South), which will be set at \$1,128 per week (\$58,656 annually) based on current data (CY 2023);
- (3) Starting January 1, 2025, increase the total annual compensation requirement needed to exempt highly compensated employees to the annualized weekly earnings of the 85<sup>th</sup> percentile of full-time salaried workers nationally, which will be \$151,164 per year based on current earnings data – this represents a substantial increase from the current levels of \$107,432 annually; and

November 2024 Update

For more information, please contact the Government Affairs department for NATA at [gov@nata.org](mailto:gov@nata.org)

- (4) Starting July 1, 2024, automatically update these earnings thresholds every three years with current wage data – this represents a change from current regulations that only require periodic reviews and require additional rulemaking to implement increased levels.

The final rule made no changes to the existing flexibility finalized in the 2019 rule that allows employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the standard salary level, provided these payments are made on an annual or more frequent basis.

### FLSA “White Collar” or “EAP” Exemption

Under the Fair Labor Standards Act (“FLSA”), non-exempt employees must receive a minimum wage and overtime pay for work conducted in excess of 40 hours a week. However, the FLSA also allows certain employees to be exempt (white collar exemption) from these minimum wage and overtime requirements if they work in executive, administrative, professional (“EAP”) or outside sales duties and meet all of the following requirements:

- Employee must be paid on a salary basis that is not subject to reduction based on the quality or quantity of work conducted (e.g., paid on an hourly basis).
- Employee must receive a salary at a rate not less than \$684 per week.
- Employee primary duties must involve the kind of work associated with the exempt status categories allowed under law (executive, administrative, professional, outside sales) (the “duties test”).

### Certified Athletic Trainers Will Continue to Fall Under “Learned Professional” Exemption Test

The 2024 DOL final rule was focused on the part of the test that relates to compensation levels. **There were no changes to the exemption’s duties test, which must also be met under the FLSA.** Given the November 15 court ruling finding the DOL inappropriately de-emphasized the duties test in favor of a salary test, the existing duties test for athletic trainers’ exemption continues to be important. Under this duties test, any learned professional must satisfy the following three general requirements:

- The employee’s primary duty is the performance of work requiring advanced knowledge.
- The advanced knowledge is in a field of science or learning.
- The advanced knowledge must be acquired by a prolonged course of specialized intellectual instruction.

### Background and Timeline on Overtime and Minimum Wage Regulations

- March 13, 2014, President Obama signed a Presidential Memorandum directing the DOL to update the regulations defining which white-collar workers are exempt from the Fair Labor Standards Act’s (FLSA) minimum wage and overtime requirements. The FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments.
- July 6, 2015, the DOL issued a Notice of Proposed Rulemaking (NPRM) – [\*Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees\*](#) (80 Fed. Reg. 38515, July 6, 2015). The DOL proposed to update and revise the regulations issued under the FLSA

November 2024 Update

For more information, please contact the Government Affairs department for NATA at [gov@nata.org](mailto:gov@nata.org)

implementing the exemption from minimum wage and overtime pay for executive, administrative, professional, outside sales, and computer employees. To be considered exempt, employees would need to meet certain minimum tests related to their primary job duties and be paid on a salary basis at not less than a specified minimum amount. The standard salary level required for exemption would be \$455 a week (\$23,660 for a full-year worker). The DOL proposed to raise the salary threshold under which white-collar workers and highly compensated employees were exempt from FLSA overtime pay requirements to \$913 a week (\$47,476 annually).

- May 23, 2016 a [Final Rule](#) was published in the *Federal Register* and was scheduled to take effect on December 1, 2016. DOL estimated that this change would make 4.2 million currently exempt workers eligible for overtime pay, assuming employers do not change employees' salaries and/or relevant duties in order to avoid exemption.
- On August 31, 2017, the court in *Nevada v. U.S. Dep't of Labor*, 275 F. Supp. 3d 795, 806 (E.D. Tex. 2017) granted summary judgment against the DOL, invalidating the 2016 final rule because it "makes overtime status depend predominately on a minimum salary level, thereby supplanting an analysis of an employee's job duties." The DOL then reverted to enforcing the 2004 salary levels.
- April 20, 2018, the DOL under the Trump Administration issued its first wage and hour opinion letters and a fact sheet stating that new rulemaking was imminent to revise current regulations located at 29 CFR Part 541, governing the exemption of executive, administrative, and professional employees from FLSA minimum wage and overtime pay requirements.
- March 22, 2019, the DOL issued a proposed rule to update the salary and compensation levels needed for workers to be exempt beginning in 2020.
- September 27, 2019, the DOL [finalized](#) its proposed rule to update the salary and compensation levels. The rule does not provide a mechanism for the DOL to regularly update the levels in future years.
- August 30, 2023, the DOL issued a proposed rule to update the salary and compensation levels needed for workers to be exempt and to update the earning thresholds automatically every three years.
- April 23, 2024, the DOL finalized its proposed rule, which had taken effect initially on July 1, 2024, with a regular update under the 2019 methodology. The rule would have required another update on January 1, 2025 under a new methodology for determining salary and compensation levels needed to be exempt. Thresholds would then be updated every three years based on current wage data, with the first automatic update in 2027.
- June 28, 2024, the court in *State of Texas v. U.S. Dep't of Labor*, Civil No. 4:24-CV-499-SDJ (E.D. Tex. 2024) granted a preliminary injunction in favor of the State of Texas, as an employer. The rules remained in effect for all other affected employers.
- July 1, 2024, the first salary level update contemplated by the April 2024 final rules took effect for most affected employers (except for the State of Texas).
- November 15, 2024, the Federal District Court for the Eastern District of Texas vacated the April 2024 final rules in the consolidated cases of *State of Texas v. U.S. Dep't of Labor* and *Plano Chamber of Commerce, et al. v. U.S. Dep't of Labor*. The decision applies nationwide to all affected employers.

November 2024 Update

For more information, please contact the Government Affairs department for NATA at [gov@nata.org](mailto:gov@nata.org)