

Client Insight: New DOL Rule Would Increase Minimum Salaries for Certain Exempt Workers, Making More Employees Eligible for Overtime Pay, and Impacting Certain Non-Compete Agreements

Insights

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The U.S. Department of Labor (DOL) issued a final rule on April 23, 2024, modifying the overtime exemptions under the Federal Labor Standards Act (FLSA) for highly compensated, executive, administrative, and professional employees. Set to take effect on July 1, 2024, this rule significantly increases the minimum salaries required for these exemptions and schedules further increases for future years. In addition to increasing the number of employees potentially eligible for overtime pay, these changes may affect the enforceability of post-termination non-compete clauses (which are currently subject to separate legal challenges) in states that rely on FLSA minimum salaries to determine eligibility for non-competes, such as Massachusetts and Rhode Island.

Although potential legal challenges may delay the rule's enforcement, it is crucial for employers to assess the impact of the rule's proposed changes on their operations promptly.

Key Changes to Overtime Rules

- **Increased Salary Thresholds for Highly Compensated Employee (HCE):**
Effective July 1, 2024, the annual salary threshold for HCEs will increase from \$107,432 to \$132,964 and it will increase again on January 1, 2025, to \$151,164.

- **Increased Salary Thresholds for Executive, Administrative, and Professional (EAP) Employees:** Effective July 1, 2024, the minimum annual salary for exempt EAPs will increase from \$35,568 to \$43,888, and it will increase again on January 1, 2025, to \$58,656.
- **Automatic Salary Updates:** Beginning July 1, 2027, the thresholds above will automatically update every three years to reflect wage growth and provide employers with predictable future adjustments.

Impact on Classification and Compensation

If the new rule takes effect, employers will need to decide whether to increase salaries to maintain current exemption status or to convert affected employees to non-exempt employees who are eligible for overtime under the FLSA. When making these calculations, employers should remember that overtime premiums are calculated using employees' "regular rate of pay," which includes all remuneration (such as non-discretionary bonuses and commissions), not just the hourly rate of pay. Employers with non-exempt employees also need to track work hours and maintain relevant records, and consider other wage and hour obligations under applicable state law.

In addition to increased costs, reclassifying certain employees as non-exempt and requiring them to track their hours worked, may affect employee morale. If certain company policies apply to non-exempt employees only, employee and manager training may be necessary.

Impact on Non-Compete Agreements in Massachusetts and Rhode Island

The enforcement of post-termination non-compete agreements in Massachusetts and Rhode Island hinges on, among other things, compliance with the FLSA's salary thresholds for exempt employees. The new rule raises the minimum threshold salaries, potentially invalidating existing non-compete agreements for HCE employees who earn less than \$107,432 per year, and EAP employees who earn less than \$43,888 (effective July 1, 2024) or \$58,656 (effective January 1, 2025). This change may necessitate revisions to how employers manage non-compete clauses with their current and future employees.

Recommended Next Steps for Employers

1. **Classification Review:** Evaluate with your Gunderson counsel regarding how the new salary thresholds may affect your workforce and current staffing strategies, and prepare for necessary adjustments.

2. **Legal and HR Consultation:** Consult your legal and HR teams to ensure compliance with exemption requirements, and to adapt employment contracts (including non-compete agreements) as needed.
3. **Stay Informed:** Keep abreast of developments and guidance from the DOL, with ongoing updates provided by Gunderson's attorneys.
4. **Communication Strategy:** If the new rule takes effect, employers should be prepared to inform employees about potential changes to their employment status.

The DOL's new rule necessitates careful planning and proactive management. Gunderson's team is ready to assist you in navigating changes to FLSA exemption criteria and addressing any related concerns.

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