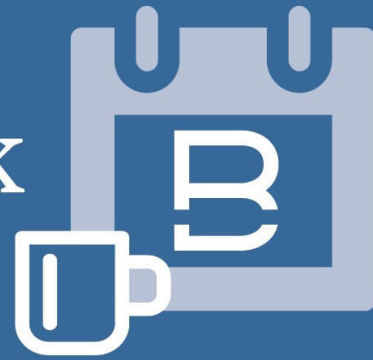


The Work Week

Bassford Remele Employment Practice Group



September 11, 2023

Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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Department of Labor Introduces New Proposal to Increase Salary Exemption Threshold

[Michael J. Pfau](#)

On August 30, 2023, the Department of Labor (“DOL”) issued a Notice of Proposed Rulemaking seeking to raise the salary threshold under the Fair Labor Standards Act (“FLSA”) white-collar exemption.

The proposal would raise the weekly salary from \$684 per week (\$35,568 annually) to \$1,059 per week (\$55,068 annually). The DOL also proposes to raise the annual salary threshold for the “highly compensated employee” exemption from \$107,432 annually to \$143,988 annually. Finally, the proposal introduces an automatic update of the earnings thresholds every three years.

Current Law

Unless exempt, employees covered under the FLSA must receive overtime pay for hours worked over 40 hours in a workweek at a rate not less than 150% of their regular rates of pay. Employees can be exempt from overtime pay under one of the white-collar exemptions if they are employed as a bona fide executive, administrative, or professional (“EAP”) employee. To qualify under one of the three exemptions, the employee must: (1) be paid on a salary basis at a rate not less than \$684 per week; and (2) perform certain job functions under one of the EAP duties as outlined in FLSA regulations and case law.

To qualify as a highly compensated employee, the employee must: (1) be compensated a total annual rate of \$107,432 (which must include at least \$684 per week on a salary basis); and (2) customarily and regularly perform at least one of the EAP job functions.

The Proposed Rule

The DOL has four main objectives in its proposed rule:

1. Increase the EAP exempt salary threshold to \$1,059 per week or \$55,068 annually, which is based on the 35th percentile of earnings of full-time salaried workers in the lowest-wage Census Region (currently the South);

2. Increase the highly compensated employee annual income to \$143,988, which is based on the 85th percentile of full-time workers nationally;
3. Automatically update the earnings threshold every three years with current wage data; and
4. Apply the standard salary level for EAP exemptions to Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

Don't Wait to Prepare

Under the Administrative Procedure Act, the public will have 60 days to comment once the Notice of Public Rulemaking is published in the *Federal Register*. Once the comments are received and reviewed, the DOL will publish the final rule. Legal challenges to the rule are anticipated, as was the case in 2016 when the DOL proposed to raise the salary threshold from \$23,660 to \$47,476 annually. The DOL eventually set the salary threshold at the current rate of \$35,568 annually, which took effect January 1, 2020.

The Proposed Rule may not go into effect for months, or perhaps years, but this is the perfect time for employers to take preemptive action and prepare. First, identify which employees would be affected by this rule, which are those earning less than \$55,068 annually or \$143,988 for the highly compensated employees. Second, develop strategy for how you intend to treat those employees with the option of reclassifying them as nonexempt, which would require paying them overtime or raising their salaries to or above the threshold to maintain their exempt status. Finally, review those employees' job duties to ensure they meet the requirements of EAP functions under FLSA regulations so that employees you wish to keep exempt truly qualify for the exemption.

At Bassford Remele, we regularly advise and counsel employers on updating policies, handbooks, and employee duties to remain compliant with changing laws. We will be tracking this proposed rule and will provide updates in future editions of *The Work Week*. In the meantime, please feel free to reach out if you need any assistance in developing a proactive plan to ensure future compliance.

Women's Leadership Summit: *Reframing the Alpha Female*

Bassford Remele proudly announces its Second Women's Leadership Summit. Join us for an invigorating discussion with Minnesota women business leaders.

Our panelists will discuss what it means to be an "alpha female." Through this discussion, the panel will explore the conventional perceptions of women in leadership positions. What is working? What isn't? How can we dismantle the misconceptions, limitations, and often damaging tropes and stereotypes surrounding powerful women and reframe what it means to be an "alpha female?"

PANELISTS

- **Jessica Monson**, Chief Legal Officer, Caribou Coffee
- **Erikka Ryan**, Director of Equity, Inclusion and Foundations, Minnesota State Bar Association
- **Jennifer Thompson**, Regional General Counsel, Ames Construction
- **Lola Velazquez-Aguilu**, Vice President and Chief Legal Officer, Neuromodulation at Medtronic
- **Brook Mallak**, Claim Attorney, Minnesota Lawyers Mutual Insurance Company

1.50 CLE credits will be applied for in Minnesota and Wisconsin

DATE Tuesday, September 12, 2023 | Registration and Networking: 2:30-3:00 pm
Summit: 3:00 – 4:30 pm Networking: 4:30 – 5:30 pm

LOCATION The Grand 1858 at Minneapolis Event Centers, 212 Second Street SE, Minneapolis
(Complimentary Parking)

[RSVP HERE](#) or contact Janet Nelson, Marketing Director, summit@bassford.com or 612.376.1656

DRESS FOR SUCCESS Bassford will be hosting a donation drive for Dress for Success, which believes in empowering every woman through employment. Dress for Success offers high touch, high impact career and workplace skills development programs for low income women to help them achieve career advancement, career stability and economic stability. Donations can be brought to the summit.

LEARN MORE ABOUT OUR EMPLOYMENT PRACTICE » »

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