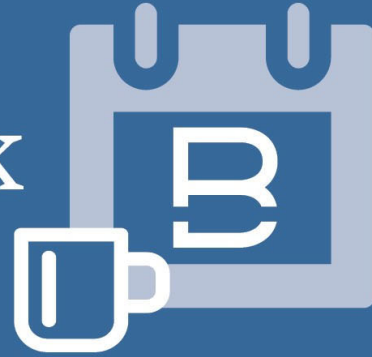


The Work Week

Bassford Remele Employment Practice Group



April 29, 2024

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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Overtime Eligibility Expanding to Include More Employees Under DOL Final Rule

[Beth L. LaCanne](#)

Last week, the Department of Labor (“DOL”) issued a final rule that will impact how employers structure compensation models, job classifications, and overall organizational strategies. The final rule raises the salary threshold for employees who are ineligible for overtime resulting in a substantial increase in the number of employees who must be paid overtime.

The DOL enforces the Fair Labor Standards Act (“FLSA”) which sets forth minimum payment requirements. The FLSA categorizes employees into non-exempt and exempt. Non-exempt employees must be paid a minimum hourly wage and overtime pay if they work more than 40 hours per week. Exempt employees are excluded from the minimum wage/overtime requirement.

The employee’s payment method and the nature of the employee’s work are the primary factors determining whether an employee is exempt versus nonexempt. Exempt employees include employees in bona fide executive, administrative, or professional positions (“EAP”) or highly compensated employees (“HCE”).

Duties Test

EAP employees, also referred to as “white collar” employees, must perform certain duties. The EAP category includes computer professionals and outside sales employees. The new rule does not change the duties test, but it is worth a brief refresher because employers will need to assess the compensation structure for many employees with the new salary thresholds.

	Primary Duty
Executive	Manage the enterprise or a customarily recognized department or subdivision of the enterprise <u>and</u> authority to hire or fire other employees or
Administrative	Perform office or non-manual work directly related to the management or general business operations of the employer or the employer's customers <u>and</u> exercise discretion and independent judgment with respect to matters of significance
Professional Learned	– Perform work requiring advanced knowledge and the consistent exercise of discretion and judgment. The advanced knowledge must be in a field of science or learning and must be customarily acquired by a prolonged course of specialized intellectual instruction
Professional Creative	– Perform work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor
Computer *can be paid a salary <u>or</u> on a fee basis	Employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field <u>and</u> perform (1) application of systems analysis techniques and procedures, (2) design, development, documentation, analysis, creation, testing or modification of computer systems, (3) programs, or design, documentation, testing, creation or modification of computer programs related to machine operating systems
Outside Sales	Make sales or obtain orders or contracts that will be paid by the client or customer <u>and</u> customarily and regularly works away from the employer's place or places of business
HCE	Perform office or non-manual work and regularly perform at least one of the duties of an exempt EAP employee identified above

Salary Threshold

Currently, EAP employees and HCEs must be paid an annual salary at or above \$35,568 or \$107,432, respectively. The final rule increases the salary thresholds in two stages and provides for an automatic increase every three years. The first stage is effective July 1, 2024, and the second phase is just six months later. Below is a chart of the increased thresholds:

	<u>EAP Annual Salary Threshold</u>	<u>HCE Annual Salary Threshold</u>
July 1, 2024	\$43,888	\$132,964
January 1, 2025	\$58,656	\$151,164
July 1, 2027 (and every 3 years thereafter)	TBD	TBD

Employers have until July 1, 2024, to prepare for the new salary threshold – whether it be converting previously salaried employees to hourly pay or raising those employees' salaries to the new threshold.

At [Bassford Remele](#), we regularly help our clients assess the impact of new regulations on their businesses and work. Please feel free to reach out to our team with any questions you may have!

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