

# The New FLSA Regulations are Here:

## What You Need to Know to Prepare

AASBO Conference  
May 2, 2024

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# The Basics

Unless specifically exempted, an employee covered by the FLSA must receive pay for hours worked in excess of 40 in a workweek at a rate not less than one and one-half their regular rate of pay.

This is referred to as “overtime” pay.

Employees are exempt if they are employed in a bona fide **executive, administrative, or professional (EAP)** capacity as those terms are defined in the Department of Labor's regulations at 29 CFR part 541.

This exemption from the FLSA is sometimes referred to as the “**white-collar**” or “**EAP**” exemption.

To fall within the EAP exemptions, an employee generally must meet the following tests:

- **Salary Basis Test:** Be paid a salary, meaning that they are paid a predetermined and fixed amount that is not subject to reduction because of variations in the quality or quantity of work performed;
- **Duties Test:** Primarily perform executive, administrative or professional duties.
- **Salary Level Test:** Salary must meet a minimum specified amount



# EAP Executive exemption



# Executive Exemption Duties



The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;



The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and



The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.



# EAP

## Administrative exemption





# Administrative exemption



The employee's primary duty must be the **performance of office or non-manual work directly related to the management or general business operations** of the employer or the employer's customers; and



The employee's primary duty includes **the exercise of discretion and independent judgment with respect to matters of significance.**

**Educational  
Establishments**

**&**

**Administrative  
Functions**

The administrative exemption is also available to

- employees compensated on a salary or fee basis at not less than the level set forth in the FLSA, or on a salary basis which is at least equal to the entrance salary for teachers in the same educational establishment, and
- whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment.

Academic administrative functions include operations directly in the field of education, and do not include jobs relating to areas outside the educational field.



Educational  
Establishments


&

Administrative  
Functions



- Employees engaged in academic administrative functions include:
  - **the superintendent**
  - **any assistants responsible for administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program;**
  - **the principal and any vice-principals responsible for the operation of an elementary or secondary school;**

Having a primary duty of performing administrative functions directly related to academic instruction or training in an educational establishment includes, by its very nature, **exercising discretion and independent judgment with respect to matters of significance.**



# EAP Professional exemption

(Learned Professional, Creative Professional, Computer Employee)



# Learned Professional exemption



Primary duty is performance of work requiring advanced knowledge;



The advanced knowledge must be in a field of science or learning; AND



The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction

# Creative Professional exemption



Primary duty is performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor

# Computer employee exemption



The employee must be compensated on a salary basis at a rate not less than the salary threshold or, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;



The employee must be employed as a **computer systems analyst, computer programmer, software engineer or other similarly skilled worker** in the computer field performing the duties described below;



The employee's **primary duty** must consist of: **The application of systems analysis techniques and procedures**, including consulting with users, to determine hardware, software or system functional specifications;

**The design, development, documentation, analysis, creation, testing or modification of computer systems or programs**, including prototypes, based on and related to user or system design specifications;



The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or  
A combination of the aforementioned duties, the performance of which requires the same level of skills.

# Computer employees

- The computer employee exemption does not include employees engaged in the manufacture or repair of computer hardware and related equipment.
- **Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations identified in the primary duties test described above, are also not exempt** under the computer employee exemption.





# What about teachers?



# Teachers

- Teachers are exempt if their primary duty is teaching, tutoring, instructing or lecturing in the activity of imparting knowledge, and if they are employed and engaged in this activity as a teacher in an educational establishment.
- Exempt teachers include, but are not limited to, **regular academic teachers; kindergarten or nursery school teachers; teachers of gifted or disabled children; teachers of skilled and semi-skilled trades and occupations; teachers engaged in automobile driving instruction; home economics teachers; and vocal or instrument music teachers.**
- The salary and salary basis requirements do not apply to bona fide teachers.



# NEW Federal Regulations



# Final Rule

- On April 23, 2024, the United States Department of Labor (DOL) released a final rule on overtime exemption.
- Increases the minimum salary amount for executive, administrative and professional (EAP) employees
- **Increases the required annual compensation** to be paid to highly compensated employees (HCEs) to be considered exempt from overtime pay requirements.

# Good News

- The final rule **does not** include any changes to the standard duties test
- Of note: there was a comment campaign to remove the teacher exemption from the overtime rules.
- DOL said it would require a separate rulemaking process to consider such a change.

# Major Increase to Minimum Salary!

- The Department last updated the EAP exemption regulations in 2019.
- Those regs set the standard salary level test at its current amount of \$684 per week (equivalent to a \$35,568 annual salary),
- Has been in effect since January 1, 2020.

# New Salary Level

The final regulations set the standard salary level at the **35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region (the South).**



Original Proposal  
**60 days**



- The Department originally proposed that all aspects of this proposed rule would become effective 60 days after publication of a final rule.
- I told you this could change. . . .



# Final Regs

Two major dates for  
implementation:

- July 1, 2024
- January 1, 2025



**July 1, 2024**



# July 1 2024

- The minimum salary required for the EAP exemptions will increase from \$684 per week to \$844 per week (equivalent to \$43,888 per year).

# July 1 2024

The minimum total compensation requirement for the **HCE exemption** will increase to **\$132,964** per year, including **at least \$844 per week that must be paid on a salary or fee basis.**


# Highly compensated employee

**HCEs performing office or non-manual work and paid total annual compensation meeting the salary threshold set by the FLSA are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.**




**January 1, 2025**





# Jan. 1 2025



The minimum salary required for the EAP exemptions will increase from \$844 per week to \$1,128 per week (equivalent to \$58,656 per year).

**Note:** This is higher than the proposed regulations!



# Jan. 1 2025



The minimum total compensation requirement for the **HCE exemption** will increase to \$151,164 per year, including at least \$1,128 per week that must be paid on a salary or fee basis.



DATE	STANDARD SALARY LEVEL	HIGHLY COMPENSATED EMPLOYEE TOTAL ANNUAL COMPENSATION THRESHOLD
Before July 1, 2024	\$684 per week (equivalent to \$35,568 per year)	\$107,432 per year, including at least \$684 per week paid on a salary or fee basis.
July 1, 2024	\$844 per week (equivalent to \$43,888 per year)	\$132,964 per year, including at least \$844 per week paid on a salary or fee basis.
January 1, 2025	\$1,128 per week (equivalent to \$58,656 per year)	\$151,164 per year, including at least \$1,128 per week paid on a salary or fee basis.
July 1, 2027, and every 3 years thereafter	To be determined by applying to available data the methodology used to set the salary level in effect at the time of the update.	To be determined by applying to available data the methodology used to set the salary level in effect at the time of the update.



**New Regs:**

**Automatic Increases  
Every 3 Years**




## Auto Updates:

The final rule calls for automatically updating the salary and total compensation thresholds every three years using earnings data published by the U.S. Bureau of Labor Statistics.


The next update will take place on **July 1, 2027.**

# Auto Updates:

- **At least 150 days** before the date of the update of the standard salary level, the Department would publish in the *Federal Register* a notice with the new earnings levels described above.



# How to Prepare for These Changes



# Review final rule

- The DOL has published a copy of the [final rule \(PDF\)](#) and answers to [frequently asked questions](#).

# Monitor!

- The regulations will likely be subject to legal challenge!
- Regulations could be stayed “nationwide” or in certain areas of the country

# Spread the Word

- Ensure all key players (Superintendent, HR, Payroll, etc.) understand the changes and potential budgetary challenges.



# Review current status

- Review who is currently deemed “exempt” in your system.
- Double-Check to ensure the employees still qualify under the existing duties test.

# Review current status

- Exemption tests are complicated – decisions should not be made by local administrators
- Job titles alone are insufficient to establish exemption
- Job descriptions alone are also insufficient to establish exemption
- Exemption depends on what employees do - not what the job description says

# Review current status

- If you don't have time or resources to conduct a thorough review, at least spot check each position when you post a vacancy
- That is a good time to update the job description too!
- Coordinate with HR, counsel, finance, and local administrators.

# Evaluate Costs

If a currently exempt employee falls below the new salary threshold, you have two options. . .

# Options

1. Reclassify them as nonexempt, which means paying them overtime when they work over 40 hours.
  - Make sure that managers are prepared to manage overtime costs and understand what hours are considered hours worked.

# Options

2. Increase their salary to meet the new threshold
  - review their job duties to ensure they continue to qualify for an exemption.
  - Additionally, make sure job descriptions accurately reflect current responsibilities.

# Things to Consider:

- Does the employee often work more than 40 hours?
- If so, how much?

# Things to Consider:

- If so, would raising the salary or paying the overtime be cheaper in the long run.
- Is comp time an option? If so, are you set up to monitor/implement?



# Things to Consider:

- Be prepared to train/implement solid timekeeping practices for newly nonexempt employees.
- Train their supervisors—they will have to get used to the change too (e.g. break time)
- Coordinate any necessary changes in salary schedule.

# Things to Consider:

- Consider setting up a system and timeline for an annual review.
- Decide who will be in charge of process!

# Things to Consider:

- You may wish to raise salaries if overtime costs add up.
- Some employees will move up the salary schedule and eventually reach the new salary threshold.
- You will need a system to implement automatic updates.

# Things to Consider:

## Under Students First:

- Reductions in employee compensation are not terminations or transfers or otherwise subject to challenge or review under this chapter, provided that the action is all of the following:
  - a. Prospective in effect.
  - b. Based on the recommendation of Superintendent and formal approval of the governing board.
  - c. Applied to similarly situated employees within the system, or within designated operating divisions, departments, or employment classifications therein.

Consult your local board attorney before embarking on this path!

# Ask Questions

- Reach out to your attorney, colleagues, AASBO, or others if you have questions!
- We will all be grappling with these changes and facing the same issues.
- There is tons of info online!