



On December 6, 2023, the Biden administration released its Fall 2023 Unified Agenda of Regulatory and Deregulatory Actions, which provides a semi-annual update on the federal government's regulatory agenda and sets target dates for upcoming rulemaking.

That update included the announcement that the U.S. Department of Labor (DOL) aims to release its final rule amending the so-called "white collar" exemptions under the Fair Labor Standards Act (FLSA), titled [Defining and Delimiting the Exemptions for Executive, Administrative, Professional Outside Sales and Computer Employees](#), in April 2024. We provide a short synopsis of the proposed changes that would go into effect with that release.

## **New Minimum Salary for Executive, Administrative, and Professional Exemptions**

Proposed changes to the FLSA exemptions for executive, administrative, and professional (EAP) employees would increase the minimum salary thresholds required for the exemptions. Currently, the minimum salary threshold for EAP exemptions is \$684 per week (\$35,568 per year). As proposed, the minimum salary threshold for EAP exemptions would increase to \$1,059 per week (\$55,068 per year), a greater than 50% jump from the current minimum threshold.

The DOL has also indicated that the \$55,068 per year rate envisioned by the proposed rule may not be the final minimum threshold set out in the final rule. The DOL plans to peg its minimum salary threshold to the 35th percentile of earnings of full-time salaried workers in the lowest-wage census region. The DOL has indicated that the final salary threshold will consider earnings data as of the date that the final rule takes effect. As a result, the final salary floor may be higher than the projected \$55,068 per year. The DOL also plans to update salary thresholds every three years to reflect the latest earnings data.

## **Changes to Highly Compensated Employees**

In addition to the proposed changes to the minimum salary threshold for the EAP exemptions, the DOL has also proposed an increase to the minimum salary threshold for highly compensated employees (HCEs). Currently, HCEs are required to be paid a total annual compensation of \$107,432 or more per year, with at least \$684 paid per week on a salary or fee basis, for the HCE exemption to apply. The DOL is proposing that the total annual compensation for HCEs be increased to \$143,988 per year, with at least \$1,059 paid per week on a salary or fee basis. This new rate is to be set to the 85th percentile of earnings of full-time salaried workers in the lowest-wage census area. As with the EAP exemptions, the minimum salary threshold for the HCE exemption would be updated every three years to reflect the latest earnings data.

## **Next Steps**

Employers with employees who are exempt through the EAP and HCE exemptions should watch for these changes in April 2024 and contact experienced counsel with questions.

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