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The U.S. Department of Labor’s 2024 Revised White Collar Regulations

Part II: Considerations and Strategies for Nonprofit Compliance

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Introduction

In April 2024, the U.S. Department of Labor (“DOL”) [published](#) revised regulations under the Fair Labor Standards Act (“FLSA”) that increase the minimum salary levels that must be paid to “white collar” employees in order for those employees to be exempt from an entitlement to overtime (“OT”) pay for hours worked in excess of 40 hours per week. The revised regulations go into effect in two stages: on July 1, 2024 and January 1, 2025.

[Part I](#) of this two-part article explains in detail the major changes made by the DOL and how those changes will impact the nonprofit community. Part I also (1) discusses the obligation of nonprofits to simultaneously comply with both the federal FLSA and applicable state wage and hour laws in Connecticut, New Jersey, and New York; and (2) provides a brief reminder to nonprofits about some of the limits on the use of volunteers.

Part II provides nonprofit employers an overview of some considerations and strategies for addressing the new, higher federal minimum salary levels for employees who are employed in a bona fide executive, administrative, or professional (“EAP”) capacity. Part II will (1) help nonprofits navigate decisions relating to whether to reclassify exempt employees as nonexempt, (2) alert nonprofits to some hidden landmines, and (3) provide nonprofits tips for complying with the revised regulations.

Brief Recap of the New, Higher Federal Minimum Weekly Salary Levels

As discussed in Part I, and only briefly summarized here:

- **Effective July 1, 2024**, the 2024 Final Rule updates the FLSA regulations as follows:

- The required minimum weekly salary level for the EAP exemptions increases from \$684 (\$35,568 per year) to \$844 (\$43,888 per year).¹
- The required minimum annual salary level for exempt highly compensated employees (“HCEs”) increases from \$107,432 to \$132,964. HCEs must receive at least \$844 weekly.²
- **Effective January 1, 2025**, the 2024 Final Rule updates the FLSA regulations as follows:
 - The required minimum weekly salary level for the EAP exemptions increases from \$844 (\$43,888 per year) to \$1,128 (\$58,656 per year).³
 - The required minimum annual salary level for exempt highly compensated employees (HCEs) increases from \$132,964 to \$151,164. HCEs must receive at least \$1,128 weekly.⁴

The balance of this article focuses on the salary levels that go into effect on July 1, 2024. Readers can adjusted the dollar amounts and calculations set forth below to gauge the impact of the increases that go into effect on January 1, 2025.

First Step With Respect to the Salary Levels that Go into Effect on July 1, 2024

The first thing an employer needs to do is identify and evaluate all of its employees who are currently classified as exempt and compensated below the new \$844 minimum weekly salary threshold. Then, the employer must decide whether to raise these employees’ weekly salary to at least \$844 (\$43,888 annualized) or reclassify them as nonexempt.

¹ To learn about the higher New York minimum weekly salary levels that are in effect for 2024, see Pro Bono Partnership’s e-alert, [New York Salary Threshold Increase](#) (Jan. 2, 2024), and Jackson Lewis’ e-alert, [New York Department of Labor Approves Proposed Modified Wage Orders](#) (Dec. 28, 2023).

² Note: Connecticut and New York do not recognize the HCE exemption. Accordingly, employers in these states should ensure that employees they designate as exempt meet another exemption that is recognized by in the applicable states.

³ To learn about the higher New York minimum weekly salary levels that will be in effect in 2025 and 2026, see Pro Bono Partnership’s e-alert, [New York Salary Threshold Increase](#) (Jan. 2, 2024), and Jackson Lewis’ e-alert, [New York Department of Labor Approves Proposed Modified Wage Orders](#) (Dec. 28, 2023).

⁴ Note: Connecticut and New York do not recognize the HCE exemption. Accordingly, employers in these states should ensure that employees they designate as exempt meet another exemption that is recognized in the applicable states.

A similar analysis needs to be conducted with respect to any exempt HCEs who are currently compensated below the new \$132,964 minimum annual salary threshold and/or are not receiving at least \$844 weekly. An employer will need to either (1) raise their salary to at least \$132,964 and, if necessary, raise their weekly pay to at least \$844 or (2) make sure they meet one or more of the more demanding standard EAP duties tests and receive at least \$844 in weekly salary.

The following discussion focuses primarily on the standard EAP exemptions and the \$844 minimum weekly salary requirement. The following discussion does not address the use of (1) nondiscretionary bonuses, commissions, and incentive pay to satisfy the \$844 minimum weekly salary and (2) permissible catch-up payments, both of which are discussed in Part I of the article. This discussion likewise addresses only the minimum salary required for the EAP exemptions, and does not address in detail the duties test that also must be met.

The Exempt Option

If an employer wants to keep one or more of the employees who are currently earning less than \$844 a week exempt from OT, it will need to increase their salary to at least \$844 a week (\$43,888 annualized) by no later than July 1, 2024. This would be a good time to also verify that their current actual duties—as opposed to what their written job descriptions say their duties are—still warrant that they be classified as exempt EAP employees. If you don't recall what the minimum duties are in order for an employee to be deemed exempt from OT, then you should review the DOL's (1) regulations at [29 C.F.R. Part 541](#), (2) [overtime Fact Sheets](#), and (3) [Small Entity Compliance Guide to the Fair Labor Standards Act's Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees](#). Also, if current job duties don't match an employee's job description, then you should update the written description.

One benefit of the DOL's changes is that employers that have had doubts about whether some of their exempt employees' duties legitimately qualified the employees for one of the standard EAP exemptions can now reclassify some or all of those employees as nonexempt and use the change in salary level as the reason for the reclassification. Even if an employer hasn't had any such doubts, it should consider reviewing all of its exempt employees' duties to ensure they are sufficient to meet one or more of the EAP duties tests.

As mentioned above, the first increase in the minimum weekly salary level goes into effect on July 1, 2024, a Monday, which might not be the first day of an employer's seven-day pay period. Thus, employers will need to be sure paychecks for that pay week properly reflect any mid-week salary increases.

The Nonexempt Option

An employer could opt not to increase the weekly salary of a currently exempt employee to at least \$844 and instead treat the employee as nonexempt effective by no later than July 1, 2024.⁵ An important consideration will be the number of hours the employee actually works each week. If the employee never works more than 40 hours in a week (including from home or the beach), the issue is somewhat academic, because the employee would not be entitled to overtime as a newly-classified nonexempt employee—whether you continue to pay the employee on a salaried basis or on an equivalent hourly basis, the annualized compensation will be the same (assuming the same number of hours worked each year).

Converting this employee to nonexempt could be cost neutral. However, be cautious in following this approach because you need to make sure you truly know how many hours the employee will be working. In today's world, with exempt employees regularly working remotely and seemingly always connected to e-mail and office servers, it might be difficult for employers to accurately measure the true number of hours an exempt (or soon-to-be-nonexempt) employee has been regularly working.

If the decision is made to reclassify an employee as nonexempt, then the employer will need to carefully monitor the hours worked, because if the hours worked in a work week exceed 40 hours, then the employee would be entitled to OT at one and one-half times the employee's regular hourly rate of pay for all hours over 40 hours.

If an employee does work more than 40 hours in a week (including from home or the beach), then the employer will need to consider strategies for compensating the employee. Options include:

- Keeping the same total annual wages by backing into an hourly rate that would allow the employee to earn the same amount when OT pay is factored in. For example, if an employee typically works 50 hours and is paid \$715 a week (\$37,180 annually), then in order not to incur higher compensation costs, the employee would need to be paid \$13 per hour:

$40 + (10 \times 1.5) = 55$ effective hours per week with the OT hours multiplier of 1.5 factored in

$\$715 \div 55 = \13 an hour

Here is a formula:

$(\text{Current weekly salary}) \div (40 \text{ hours} + (\text{OT Hours} \times 1.5))$

⁵ If July 1, 2024 is not the first day of the employee's seven-day pay period, then the change to nonexempt status should be made effective by no later than the first day of the seven-day pay period in which July 1, 2024 falls.

But note that this strategy has its limits in view of escalating minimum wage rates for nonexempt employees in the tristate region (and elsewhere) resulting from the “Fight for \$15” movement that started in New York City in 2012. The foregoing illustration is straightforward, but the \$13 per hour rate is significantly below the minimum hourly wage required in Connecticut, New Jersey, and New York for most employees.⁶ As a result, we can’t set forth here an easy, one-size-fits-all illustration that will work in all three states and for different categories of nonexempt employees.

Some time-consuming calculations will be needed in order to back into the number of allowable OT hours so that total weekly compensation doesn’t increase. For example, in New Jersey, in 2024 an employer with six or more employees must pay an EAP employee at least \$15.13 an hour. In the illustration above, in order to keep the employee’s weekly pay at or below \$715, the maximum number of OT hours the employee could work if paid \$15.13 an hour would be 4.8 hours: $(40 \times \$15.13) + (4.8 \times \$22.70) = \$714.16$.

- Keeping the same total annual wages by treating the employee as a salaried nonexempt employee. The DOL has special rules relating to paying nonexempt employees on a salaried basis at [29 C.F.R. §§778.113 and 778.114](#). Employers should not adopt the “[fluctuating work week](#)” option for paying a salary without first consulting with legal counsel, as it can be [difficult to implement](#) and is not permissible under some state laws.
- Reducing the employee’s workload so that the employee will not work over 40 hours and, if necessary, either distributing the work still needing be done to employees who are not at risk of going over 40 hours a week or, possibly, hiring a second employee to pick up some or all of the extra work. For example, an employee who works, on average, 50 hours a week could have hours reduced by 50%, with a new employee working 25 hours as well. With some creative thinking, the employer potentially could change hours so that one or both of the

⁶ Here are links to the minimum wage schedules in Connecticut, New Jersey, and New York:

- Connecticut: <https://www1.ctdol.state.ct.us/lmi/ctminimumwage.asp> and <https://portal.ct.gov/dol/divisions/wage-and-workplace-standards>
- New Jersey: https://www.nj.gov/labor/wageandhour/assets/PDFs/minimumwage_postcard.pdf
- New York: <https://dol.ny.gov/minimum-wage-0>

The federal DOL has charts showing the [Minimum Wage Laws in the States](#) and [Minimum Wages for Tipped Employees](#).

employees would not qualify for some employee benefits for which full-time employees would otherwise qualify.

- Determining the overall fiscal impact of having to pay additional compensation as OT and possibly changing fringe benefits, such as reducing the size of the employer's matching contributions to its 401(k) or 403(b) plan, eliminating a vacation day for all employees, and/or eliminating or delaying pay increases, discretionary bonuses, and promotions that otherwise had been planned.

To the extent that reclassified employees previously were receiving bonuses, commissions, or other incentive compensation, employers will need to rethink those forms of compensation or carefully evaluate how to factor them into the weekly compensation of now-hourly employees. Some of these compensation payments might need to be included in the nonexempt employees' "regular hourly rate" for purposes of calculating any OT premium pay due. See the DOL's OT compensation rules at [29 C.F.R. §§778.200 to 778.225](#) and [Fact Sheets 56A, 56B, and 56C](#) for details.

Other Issues

Implementing the DOL changes has the potential to cause employee relations and legal issues, such as:

- *Potentially distorted salary bands.* If an employer decides to increase the minimum weekly salary in order to keep an employee classified as exempt, this might upset the overall salary structure within the nonprofit unless other pay adjustments are made. The employee's new (potentially significantly higher) salary will draw closer to the salary paid to higher-paid employees, whose salaries might be higher due to, e.g., supervisory duties, skill level, and/or seniority.

Similarly, the higher salary might further widen the pay gap between lower-level employees and white collar employees. This review of the nonprofit's overall pay structure offers a good opportunity for the organization to address known and previously unidentified pay disparities that might have an adverse disparate impact based on a protected characteristic, such as race or sex.⁷

- *Two employees doing the same job, one of whom is classified as exempt and the other as nonexempt.* Employment lawyers often advise that it is not a good idea to have two employees (especially full-time) doing the same job where one is

⁷ In 2018, New Jersey enacted the New Jersey's Diane B. Allen Equal Pay Act ("Act"), which requires equal compensation (including benefits) for "substantially similar work," when viewed as a composite of skill, effort, and responsibility. The Act prohibits unequal compensation (including benefits) based on any of the numerous characteristics protected by the New Jersey Law Against Discrimination. To learn more about the Act, read the Jackson Lewis [article](#) on Pro Bono Partnership's website.

classified as exempt while the other is classified as nonexempt. That distinction is a potential red flag during an audit by the federal or state DOL, and it could raise employment discrimination issues (e.g., one employee is man and the other employee is a woman). Moreover, managers might have a hard time remembering that the two employees are classified differently, which could lead to problematic mistakes, such as impermissible pay-docking with respect to the exempt employee.

In addition, there are pragmatic issues to be concerned with if the employees' base weekly wages and duties are the same and just one of them is OT eligible:

- The nonexempt employee might end up with total compensation that is higher due to OT pay.
- To avoid the situation described immediately above, a manager might decide to give more work to the OT-ineligible exempt employee.
- If a department needs to reduce its budget, the OT-eligible employee might be directed to work fewer hours (and, therefore, will receive less pay), with the exempt employee expected to pick up the extra work.
- The exempt employee whose weekly salary is increased to at least \$844 is not required to complete a timesheet or punch a clock. This employee also would retain flexibility with respect to when to work and, therefore, can shift hours from one week to the next without the employer needing to worry about potential OT pay during the second week.

In contrast, the exempt employee whose weekly salary is not increased to at least \$844 will become nonexempt and will lose the scheduling flexibility the employee might have valued.

- *Employees seeking union representation.* If exempt employees are reclassified as nonexempt and their supervisory authority is eliminated, they become eligible for representation by a union. Employees who feel that their status and autonomy in the workplace have been greatly diminished might be more attentive to the uptick in messaging from unions that might occur during the following months.

Additionally, employers will need to train the newly-classified nonexempt employees about the nonprofit's timesheet policies, as most if not all of them might not be accustomed to recording hours worked and not working overtime without express permission from their managers. Hours spent in training sessions and certain travel hours will now be compensable time that needs to be properly accounted for—see [29 C.F.R. Part 785](#). Work from home or the beach will now also be compensable time; hours that these employees will need to begin to track.

If employers haven't done so already with respect to nonexempt employees, they should consider turning off those employees' e-mail and company-server access after normal working hours and/or regularly reinforcing the new limits on working more than 40 hours in a week without permission.

Employers should also be prepared to follow up and audit the timekeeping practices of newly-classified nonexempt employees to ensure that they are following proper processes and procedures. This would include, for example, checking e-mail systems to see if the employees have been working off-hours but not recording those hours on their timesheets.

Culture Change for Formerly White-Collar Employees

These employees aren't used to tracking their hours and some of them likely have been working 24/7 for a long time. This will require a dramatic—and perhaps welcomed—change in the mindset of employees being converted to nonexempt status.

Consider [the finding](#) published in 2015 by Jennifer Deal, Senior Research Scientist at the Center for Creative Leadership:

The use of smartphones to stay connected to work 24/7 is so common that it's now considered the "new normal." People are fatigued and angry about being always on and never done; the lines between their personal and professional lives blurred if not completely eliminated. . . . We've found that professionals, managers, and executives who carry smartphones for work report interacting with work a whopping 13.5 hours every workday (72 hours per week including weekend work).

Similar feelings have been expressed by employees as a result of work-from-home during the COVID-19 pandemic.

Nonprofits will need to manage this. If the management of a nonprofit is aware of newly-classified nonexempt employees (as well as currently-classified nonexempt employees) working off the clock, it needs to stop that practice immediately, and it must pay the employees for any hours actually worked.

Managers should issue a stern warning to employees who fail to follow proper timekeeping practices and impose more significant discipline for repeat violators, as well as provide additional training regarding the organization's timekeeping practices. Failure to take appropriate corrective action could lead to significant back pay liability, penalties, interest, and criminal liability. Federal and state departments of labor and taxation can—and do—seek to hold supervisors and managers (including board members) personally liable for knowingly (1) allowing off-the-clock work to occur, (2) failing to pay all wages due employees, and/or (3) failing to withhold income taxes on wages owed employees and remit those taxes to the government. The articles [here](#), [here](#), [here](#), and [here](#) explain the principles of personal liability.

Communicating the Changes

Employees will have lots of questions and they will be talking among themselves. Don't try to stop employees from doing so. Generally, employees have a protected right to discuss their terms and conditions of employment, including compensation.

It is important for nonprofits to recognize employees' concerns—their compensation is at stake. For those employees who will be reclassified as nonexempt, employers should consider preparing talking points for managers about the changes. Talking points can help managers explain, in a consistent manner, the reason for the changes and how the changes will impact, if at all, the employees' compensation, benefits, and opportunities for career advancement. Some supervisors might not have the skill set to communicate on this topic, so consider having them direct employees who have detailed questions to a specific person, such as the manager who oversees human resources.

Give as much notice as possible to affected employees. At least 30 days would be ideal.

Keep Your Notes, As You Might Need Them in the Future

Employers should make general notes regarding the considerations and strategies they evaluated this year in order to stay in compliance, and should keep copies of any talking points, FAQs, and other general communications they created, because the DOL has committed to updating the required minimum weekly salary level more regularly.

The homework done this year likely will help save you time in the future.

Questions

If you have any questions regarding the content of this article, please contact one of the following Pro Bono Partnership lawyers:

- For Connecticut and New York nonprofits: Jennifer Grudnowski, Esq., at (914) 328-0674 x335.
- For New Jersey nonprofits: Christine Michelle Duffy, Esq., at (973) 240-6955 x303.

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