

# WILENTZ

—ATTORNEYS AT LAW—

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## Employers beware! You are not Exempt from New DOL Thresholds regarding Overtime Eligibility

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The FLSA has long utilized a three-part test to determine if an employee is exempt from receiving overtime. The test is as follows:

1. The employee must be paid a salary which does not vary;
2. The salary has to equal or exceed a set minimum amount; and
3. The employee's duties must consist of executive, administrative, or professional duties or the employee must work in a specialized area, such as computer professionals or commissioned sales employees [[Salaried Employees May be Entitled to Overtime Pay](#)].

On April 23, 2024, the US DOL released its final rule regarding raising the salary thresholds (#2 above).

The current threshold is \$684 a week/\$35,568 a year.

**The new rule raises the income threshold. As of July 1, 2024, the threshold will be \$844 per week/\$43,888 per year. Then, on January 1, 2025, the threshold will rise to \$1,128 per week/\$58,656 per year.**

Additionally, highly compensated employees, who do not meet all of the elements of the third prong of the overtime exemption test,<sup>[1]</sup> may still be exempt from overtime if they earn at least \$107,432 per year under the current rule. **Also, under the new rule effective on July 1, 2024, to be classified as a "highly compensated employee", an employee will have to earn at least \$132,964 per year. This threshold will rise again on January 1, 2025, to \$151,164.**

Lastly, automatic updates will take place every three years based on the latest earnings data.

**TAKEAWAY:** If an employer improperly classifies an employee as exempt (because they do not meet all three elements above, including paying the proper threshold) and, therefore, does not keep track of their time, the court will rely on the veracity of the employee's testimony in determining if overtime is owed. As a result, it's imperative that employers ensure employees are correctly classified and if you are unsure, contact [Tracy Armstrong](#) or another member of the Wilentz [Employment Law](#) Team.

Resources:

<sup>[1]</sup> FLSA regulations note that because a high level of pay is a "strong indicator" of exempt status, it eliminates the need for a "detailed analysis" of job duties. Thus, the regulations currently state, an employee earning a salary of \$107,432 or more a year will qualify for exemption if the worker's primary duty is performing office/non-manual labor and the worker "customarily and regularly performs any one or more of the exempt duties" of an executive, administrative or professional employee.

### Attorney

- Tracy Armstrong

## Practice

- Employment Law