

Are My Employees Actually Exempt? – A Review of the DOL’s Final Rule Raising Overtime Exemption Thresholds

On April 23, the DOL issued its final rule on overtime exemption thresholds, which were raised from the proposed rule, released in September 2023. The DOL’s press release can be located [here](#). In short, the Final Rule increases the overtime salary threshold from \$35,568 per year to \$43,888 per year effective July 1, 2024. The threshold is also set to increase yet again on January 1, 2025, to \$58,656 per year or \$1,128 per week. Additionally, the highly compensated employee threshold is set to increase from \$107,432 per year to \$132,964 per year on July 1, 2024, and then again increase to \$151,164 per year on January 1, 2025. Furthermore, the DOL will be increasing salary thresholds every three years starting July 1, 2027, using up-to-date wage data.

What does this mean for home-based care agencies? Under the federal Fair Labor Standards Act (FLSA), employers are required to pay employees overtime compensation for any hours worked more than 40 hours in a workweek, unless that employee qualifies as exempt under the FLSA. Certain criteria must be met to be considered exempt, including that the employee must make a salary equal to or greater than the thresholds set by the DOL for exempt employees. If those employees do not make at least the threshold amount, they must be paid overtime compensation even if they meet all other criteria to be considered exempt. The DOL estimates that 4.3 million employees will be affected by these increases to the exempt salary threshold. Given the upcoming increases to the thresholds and the significant number of employees likely affected, this is the ideal time for agencies to review the current classifications of their employees to ensure employees are properly classified and that all requirements under the FLSA are being met. The DOL commonly reviews home-based care agency exemption classifications and finds certain positions misclassified. Positions often found to be misclassified as exempt include care coordinators and schedulers who do not have significant supervisory authority, marketers and other sales positions that do not spend the majority of their time outside the agency or their individual homes, clinician assistant positions such as Licensed Practical Nurses, Licensed Vocational Nurses, Physical Therapist Assistants, Home Health Aides, and others who provide medical care but cannot be treated as professionally exempt, and clinicians such as Registered

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Nurses, Physical Therapists, Occupational Therapists, and Medical Social Workers who generally can be treated as professionally exempt under the FLSA but are compensated via a Pay-Per-Visit model or some other hybrid pay model that may include elements that jeopardize the exemption.

The classifications affected by the new increase in salary threshold (exclusive of board, lodging, and other facilities) are executive, administrative, professional, and highly compensated employees. Below we outline the requirements for each exemption that must be met in addition to paying at least the minimum salary threshold:

Executive. An employee qualifies for this exemption if (1) their main duty is managing the enterprise, a department of the enterprise, or a subdivision thereof in which they are employed; (2) they typically manage the work of at least two full-time employees, or their equivalent; and (3) they have the authority to or have weighted recommendation power on the hire, fire, promotion, and other status changes of employees. Furthermore, an employee who has a 20% equity interest in the business and actively manages the business (trains employees; sets rates of pay and hours of work; directs, disciplines, and appraises employees; handles complaints/grievances; monitors the safety of the employees and workplace; plans/controls the budget; monitors and implements legal compliance measures) also qualifies for this exemption.

Administrative. An employee qualifies for this exemption if (1) their main duty is performing office and/or non-manual work related to management or general operation of the business, meaning assisting with the running of the business, for the employer or its customers (finance, accounting, budgeting, auditing, insurance, advertising, marketing, research, safety and health, personnel management, human resources, labor relations, public relations, government relations, computer/internet/database administration, legal/regulatory compliance) and (2) their main duty includes exercising, “discretion and independent judgment with respect to matters of significance,” meaning they have the authority to interpret, deviate from or implement policies; have major assignments in business operations; perform work with a substantial impact on business operations; have the authority to make financial decisions or negotiate and bind the enterprise on significant matters; consult with or provides expert advice to management; plan long and/or short term objectives for the business; investigate and/or resolve significant matters for management; and/or handle complaints or resolve grievances. This does not include employees who do secretarial or clerical work and/or employees who primarily record data or perform other repetitive and routine work.

Professional. An employee qualifies for this exemption if their work performance requires knowledge of an advanced field/learning (work requires advanced knowledge in a field of science or learning and is acquired through prolonged course of specialized instruction). The fields of science include traditional professions of law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical/chemical/biological sciences, pharmacy, and similar occupations of a professional status. It does not include skilled trades. An employee may also qualify for this exemption if their work performance requires the invention of and/or talent in a recognized creative or artistic field. A creative or artistic field could include music, writing, acting, and the graphic arts.

Highly Compensated. An employee qualifies for this exemption if they regularly and customarily perform one or more of the responsibilities or duties of an administrative, professional, or executive employee and their salary meets the heightened threshold for a highly compensated employee. This exemption only applies to employees performing office or non-manual work.

As with most final administrative rules, it is expected that there will be lawsuits challenging the legality of this new final rule, however, it is recommended that employers begin to prepare for the implementation of the final rule on July 1 regardless of any pending lawsuit that may affect the rule in the meantime.

You can find additional information on the Polsinelli *at Work* blog [here](#). Please also feel free to reach out to onlinesolutions@polsinelli.com, and we will be in touch with you.