Employers Should Act Now to Address Rising DOL Salary Thresholds for Exempt Employees

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The U.S. Department of Labor (DOL) has just issued its final rule defining and delimiting the exemptions for executive, administrative, professional, outside sales and computer employees under the Fair Labor Standards Act, wrapping up a lengthy process of what are now confirmed to be significant revisions.

Included in the rule is an increase to the standard salary level as well as the annual compensation threshold of Highly Compensated Employees (HCE) with regular increases in the future.

The increases are the result of a change in methodologies used to determine these thresholds, purportedly to allow for better screening of employees. The DOL claims that the prior standard salary level was too low, causing a number of lower-paid white-collar employees to be included in the exemption despite performing significant amounts of non-exempt work.

Similarly, the higher threshold for HCE, according to the DOL, is intended to weed out those employees who are not really performing executive, administrative or professional functions, but may, nonetheless, be deemed exempt simply because they are in high-income regions and industries. There was also a concern expressed by the DOL that the salary scale would become obsolete without an updating mechanism.

The DOL's solution was to revise its methodologies, setting the standard salary level at the 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region (currently at the 12th percentile) and the HCE threshold at the 85th percentile (currently at the 70th).

Accordingly, on July 1, the standard salary level will increase to $844 per week (a 23% increase) and the annual compensation threshold for HCE will rise to $132,964 (a 24% increase). On January 1, 2025, the new methodologies will become fully applicable, and the thresholds will increase to $1,128 and $151,164, respectively.

Future updates will happen every three years, beginning on July 1, 2027. The DOL states that these changes “will allow for the timely, predictable, and efficient updating of the earnings thresholds.”

Employers are encouraged to review the compensation of those employees who may be impacted by the threshold changes and to consider the budgetary ramifications of making the changes, particularly for those employers who will be impacted by both increases in the same budget year. Employers are also encouraged to seek legal counsel to assist in determining the applicability of exemptions using the 2004 simplified test, the now preferred test of the DOL.