



TECHNICAL UPDATE

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NEW LABOR RULE REDEFINES EXEMPTIONS

Employees are exempt from the Fair Labor Standards Act's (FLSA) minimum wage and overtime protections if employed in a bona fide executive, administrative, or professional (EAP) capacity, as those terms are defined in the Department of Labor's (DOL) regulations. To fall within the EAP exemption, an employee generally must meet three tests:

1. be paid a salary, meaning that they are paid a predetermined and fixed amount that is not subject to reduction because of variations in the quality or quantity of work performed;
2. be paid at least a specified weekly salary level; and
3. primarily perform executive, administrative, or professional duties, as provided in the DOL's regulations.

The DOL's regulations also provide an alternative test for certain highly compensated employees who are paid a salary, earn above a higher total annual compensation level, and satisfy a minimal duties test.

The final rule will increase the standard salary level and the highly compensated employee total annual compensation threshold on the rule's effective date on July 1, 2024, and on January 1, 2025, when changes in the methodologies used to calculate these levels become applicable. The final rule also provides for future updates of these levels every three years to reflect current earnings data.

WHY IS THE DOL REVISING THE EXEMPTION REGULATIONS?

The DOL is committed to keeping the earnings thresholds up to date for the benefit of workers and employers. Over four years have passed since the 2019 rule, during which time salaried workers in the U.S. economy have experienced rapid wage growth, which decreased the effectiveness of the \$684 per week salary level established in 2019 in helping to define the EAP exemption.

DOES THE RULE APPLY TO GOVERNMENT WORKERS?

State and local government employers are subject to the FLSA and the DOL's regulations concerning EAP employees.

HOW WILL EMPLOYERS RESPOND TO THE UPDATED THRESHOLDS ESTABLISHED IN THIS FINAL RULE?

Employers have various options for responding to the updated thresholds. For each employee who is affected, an employer may:

- increase the salary of the employee to at least the new salary level to retain their exempt status;
- pay an overtime premium of one and a half times the employee's regular rate of pay for any overtime hours worked;
- reduce or eliminate overtime hours;
- reduce the amount of pay allocated to the employee's base salary (provided that the employee still earns at least the applicable hourly minimum wage) to offset new overtime pay; or
- use some combination of these responses.

For additional frequently asked questions, visit the [U.S. Department of Labor Wage and Hour Division](https://www.dol.gov/eis/whd/).

NOTICE: On April 23, 2024, the U.S. Department of Labor (DOL) announced a final rule, [Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees](#), which takes effect on July 1, 2024. The final rule updates and revises the regulations issued under section 13(a)(1) of the Fair Labor Standards Act, implementing the exemption from minimum wage and overtime pay requirements for executive, administrative, and professional (EAP) employees. Revisions include increases to the standard salary level and the highly compensated employee total annual compensation threshold and adding to the regulations a mechanism that will allow for the timely and efficient updating of these earnings thresholds to reflect current earnings data.

WHAT THIS MEANS FOR COUNTIES

Labor laws and regulations can change, so it's crucial to consult authoritative sources for the latest information. For complex payroll and labor law matters, it's advisable to consult with your county attorney or HR expert familiar with the amendments effective in 2024 and how employers can comply with Colorado's new obligations. The material in this Technical Update is informational and general in nature and doesn't constitute legal advice. For more information, contact CTSI at (303) 861-0507.