October 25, 2024

Minimum Salary Amounts for Overtime Exemptions Set to Increase Again as of January 1

By Stephen P. Bond

Federal law recognizes that certain "white collar" positions can be exempt from the mandatory payment of overtime compensation if the position in question satisfies certain criteria set forth in federal regulations – a combination of having duties which meet certain definitions + being paid on a salary basis at a minimum level. Last April, the U.S. Department of Labor issued formal rules set to increase those salary minimums in an initial two steps. The first was on July 1; and it, generally, has taken effect -- "overnight" millions of previously exempt employees became entitled to overtime.

The second move is scheduled for January 1, 2025[1]. Those changes can be described as follows:

	Salary Level Before July 1, 2024	Salary Level Since July 1, 2024	**Starting January 1**, 2025
STANDARD "WHITE COLLAR" POSITIONS ("executive," "administrative," "professional")	~~$684 per week (equivalent to $35,568 per year)~~	$844 per week (equivalent to $43,888 per year)	$1,128 per week (equivalent to a **$58,656** annual salary)
"HIGHLY COMPENSATED EMPLOYEE" POSITIONS	~~$107,432 per year, including at least $684 per week paid on a salary or fee basis~~	$132,964 per year, including at least $844 per week paid on a salary or fee basis.	**$151,164** per year, including at least $1,128 per week paid on a salary or fee basis

As there is with virtually every new federal rule these days, there *was* court litigation to challenge it. Two federal courts in Texas have cases in front of them directly challenging the enforceability of the Rule, the briefs are all filed, and the Judges are expected to issue decisions prior to January 1; but there is no specific date set. We also don't know whether any Order would apply outside of Texas, even if it were in favor of the challengers.

The primary argument being used to challenge the new rules has been that whether someone is, say, an "executive" should be based on the actual duties he performs, since that is how Congress structured the exemptions in the original statute, and that salary was never really stated by Congress to be part of the analysis. The counter-argument has, essentially, been that, while duties are key, salary levels can legitimately be used as an *additional* criterion to help sort the exempt from the nonexempt. As it

[1] Most states either have no regulations corresponding to the federal law, or, like Ohio, incorporate the federal rules into the State's system. A handful of States (Alaska, California, Colorado, New York, and Washington) have their own formulas for computing the salaries that warrant overtime exemptions and may increase those levels in 2025 regardless of what happens on the federal level.

happens, the federal Court of Appeals with jurisdiction over both of those Texas Judges, happened to issue a decision in September concluding that[2], fundamentally, there is nothing wrong with the Labor Department using the combination of duties + salary in defining these exemptions, so long as the salary level is not so high and so determinative of this status that it renders the question of whether the job duties meet the exemption irrelevant.

So, that suggests that the ultimate decisions of the two Texas Judges may turn on the issue of whether these anticipated January increases in the salary minimum ($58,656) would now be so high as to effectively render the question of job duties moot – there's no apparent way of really guessing how the Judges will determine where that dividing line might be.

Net result is that there is at least an even chance that the Rule will prevail in court; and it would be prudent to once again assess your exposure in terms of: the number of employees you consider exempt who do not presently make a salary of $58,656; and how quickly you could implement salary increases for those employees if you reach January 1 without help from Texas. When/if the January change takes effect, the alternatives are: (1) raise those individuals' salaries; (2) start paying for overtime, despite the persons being salaried; (3) dictate and enforce a rule that these individuals never exceed 40 hours, even though salaried (38 hours might even be a preferable limit to allow a "cushion"); or (4) switch them to hourly.

Aretta Bernard
Practice Group Manager
Employment Services
330.849.6630 | abernard@ralaw.com

Heather Renée Adams
312.241.9991 | hradams@ralaw.com

Karen Adinolfi
330.849.6773 | kadinolfi@ralaw.com

Bob Blackham
216.615.4839 | bblackham@ralaw.com

Stephen Bond
440.934.8110 | sbond@ralaw.com

Michael Brohman
312.582.1682 | mbrohman@ralaw.com

Christopher Carney
216.830.6825 | ccarney@ralaw.com

Barry Freeman
216.615.4850 | bfreeman@ralaw.com

Morris Hawk
216.615.4841 | mhawk@ralaw.com

Paul Jackson
330.849.6657 | pjackson@ralaw.com

Stephanie Olivera Mittica
330.849.6671 | smittica@ralaw.com

Nancy Noall
216.820.4207 | nnoall@ralaw.com

Danielle Young
216.293.5107 | dyoung@ralaw.com

Thomas Wiencek
330.434.5604 | twiencek@ralaw.com

[2] There had been a long-standing federal doctrine (the Chevron doctrine) under which federal courts deferred to the judgment of federal administrative agencies in their interpretations of the laws they regulate. The U.S. Supreme Court, in June, issued a decision overruling that doctrine. Those arguing against this overtime rule urged that, as a result, the Texas courts were now free to interpret/apply the law as they chose, regardless of the Labor Department's interpretation of their authority to issue it. In its September decision, the Appeals Court acknowledged that change from the Supreme Court and performed its own analysis of the Labor Department's authority – but, as noted, they still agreed with the Labor Department that it was not inherently barred from using salaries as one of the criteria for establishing exemptions.