



MISSOURI CHAMBER
OF COMMERCE AND INDUSTRY

2024 Changes to U.S. Labor Law


Background

- The Fair Labor Standards Act was passed in 1938 and ushered in a large change to labor policy
 - Implemented overtime pay
 - Enacted minimum wage
 - Prohibited minors under 18 from working in certain industries
- The law and regulations around FLSA have been updated dozens of times since 1938
 - Some of these have been major changes, such as age discrimination, and others have been minor, such as federal contract requirements

Background

- The overtime and minimum wage laws apply to all public and private employers with two exceptions:
 - Services and retail businesses with less than \$500,000 in revenue that do not engage in interstate commerce (if you accept credit cards, that counts as interstate commerce)
 - Certain employees within state and local governments, such as firefighters, police and teachers

July 1 Overtime Changes

Earnings Threshold	Current Amount	Minimum Salary Amount Beginning July 1, 2024	Minimum Salary Amount Beginning January 1, 2025
Standard Salary Level 	\$684 per week (equivalent to a \$35,568 annual salary)	\$844 per week (equivalent to a \$43,888 annual salary)	\$1,128 per week (equivalent to a \$58,656 annual salary)
Total Annual Compensation Requirement for Highly Compensated Employees (HCEs)	\$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

- After July 2027, threshold will be based on:
 - The salary level of the 35th percentile of salaried workers in the lowest wage region
 - For highly compensated employees (HCE), that level is set at the 85th percentile of salaried workers in the lowest wage region

Criteria for Salaried Employees

- For an employee to be exempt from overtime pay and minimum wage, they must meet these three requirements:
 - An employee is paid a salary,
 - The salary is not less than a minimum salary threshold amount, and
 - The employee primarily performs executive, administrative or professional duties. This is known as the EAP exemption.

EAP Definitions

Executive

- The employee's primary duty must be managing the enterprise, or managing a department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more FTE; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

EAP Definitions

Administrative

- The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

EAP Definitions

Professional

- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

Highly Compensated Employee (HCE) Requirements

- Meets the salary threshold of an HCE
- The employee's primary duty includes performing office or non-manual work; and
- The employee customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.
- This means they only need to meet one of the criteria of an EAP employee



Outside Sales Exemption

- To qualify for the outside sales employee exemption, all the following tests must be met:
 - The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
 - The employee must be customarily and regularly engaged away from the employer's place or places of business.
- The minimum salary requirement is not needed if they meet this definition



Recap

- Employees are required to be paid overtime for working over 40 hours per week unless:
 - They are paid a salary,
 - They meet the minimum salary requirement of \$43,888, and
 - Meet all requirements to be considered in an executive, administrative, or professional (EAP) role
- Or fall under the definition of HCE:
 - Make a salary of \$132,964
 - Meet any one criteria within the EAP checklist
- Or meet the outside sales exemption

Enforcement of FLSA

- The Wage and Hour Division of the U.S. Department of Labor enforces all provisions
 - Employees can file a complaint, which triggers an investigation
 - Violations are subject to a 2-year statute of limitations. Willful violations have a 3-year statute of limitations.
 - If a violation occurs, back wages may be paid and penalties of up to \$1,000 per violation may be assessed
- Missouri Department of Labor does not enforce the overtime provisions in the FLSA



Current Status of Rule

- Many business groups have threatened to file a lawsuit, including the U.S. Chamber
- So far, the Plano Chamber of Commerce, American Hotel and Lodging Association, Associated Builders and Contractors and National Retail Federation have all filed a lawsuit on the rule
- The State of Texas was successful in exempting its public employees from the new overtime rule



FTC Noncompete Rule

- What is a noncompete agreement?
 - An agreement or clause in a contract specifying that an employee must not enter into competition with an employer after the employment period is over.
 - Usually for a set amount of time
 - Each state has slightly different rules
- Overall, any restriction must be reasonable



FTC Noncompete Rule

- Goes into effect Sept. 4, 2024
- Bans all new noncompete agreements for entities within the FTC's jurisdiction
 - Employers must give notice that noncompetes are unenforceable after that date
 - Exception: Existing agreements with senior executives, but new ones cannot be implemented
 - Senior executives make over \$151,164 and are in a decision-making position
- Exceptions: Banks, savings and loan institutions, federal credit unions, common carriers, air carriers and most nonprofits (including tax-exempt hospitals) are not subject to the new rule

FTC Noncompete Rule

- Enforcement
 - Noncompetes will no longer be legally binding
- Legal Challenges
 - A Texas accounting firm has been granted a preliminary injunction by a federal judge



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Questions?

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