

33rd Annual
Tax Symposium

**NEW SALARY BASIS RULE FOR
EXEMPT EMPLOYEES AND HOW IT
AFFECTS YOUR BUSINESS**

Maribel G. Newhouse, Esq.



MaddIn, Hauser, Roth & Heller, P.C.
One Towne Square, Fifth Floor, Southfield, MI 48076
p (248) 354-4030 f (248) 354-1422 maddinhauser.com



OVERVIEW

- Discussion of the FLSA Overtime Rule and Exempt versus Non-Exempt Classifications
- Explanation of the New Department of Labor Rule
- Best Practice for Compliance Moving Forward



WHAT IS THE FLSA

ESTABLISHES:

- Federal minimum wage
- Overtime requirements
- Record keeping requirements
- Child labor standards



THE FLSA DOES NOT REQUIRE:

- Vacation, holiday, severance, or sick pay;
- Meal or rest periods;
- Premium pay for weekend or holiday work;
- Pay raises or fringe benefits; or
- A discharge notice, reason for discharge, or immediate payment of final wages to terminated employees.

EXEMPT V. NON-EXEMPT

E.A.P. EMPLOYEES

Formula: salary basis + primary duties

- Salary Basis – the employee must be compensated at a rate not less than the standard salary level required by the Department of Labor.
- Primary Duty – the principal, main, major or most important duty that the employee performs.

E = EXECUTIVE

- Salary basis +
- Primary duties:
 - Manage the enterprise, or manage a customarily recognized department or subdivision of the enterprise;
 - Customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
 - Have authority to hire/fire other employees, or the employee's suggestions and recommendation as to hiring, firing, advancement, promotion or other changes of status of other employees must be given particular weight.



A = ADMINISTRATIVE

- Salary basis +
- Primary duties:
 - 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
 - Exercise of discretion and independent judgment with respect to matters of significance.



P = PROFESSIONAL (Learned or Creative)

- Salary basis +
- Primary duties:
 - **Learned**
 - Performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character which includes work requiring the consistent exercise of discretion and judgment;
 - Advanced knowledge in a field of science or learning; and
 - Advanced knowledge customarily acquired by a prolonged course of specialized intellectual instruction
 - **Creative**
 - Performance of work requiring invention, imagination, or originality or talent in a recognized field of artistic or creative endeavor.



HIGHLY COMPENSATED EMPLOYEE EXEMPTION

Similar to the E.A.P. Exemption, the highly compensated employee exemption applies:

1. To salaried workers who earn more than the designated threshold;
2. Whose primary duty includes performing office or non-manual work; and
3. Who customarily and regularly perform at least one of the exempt duties of an exempt executive, administrative, or professional employee.

OTHER EXEMPTIONS

- Computer Related Occupations - must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the certain duties
 - Must be compensated either by the salary or hourly minimum
- Outside Sales – primary duty is to make sales or obtain orders/contracts for services outside of employer’s place(s) of business
 - No salary level or salary basis test

THE NEW DOL RULE

NEW DOL RULE

- Effective July 1, 2024
- Purpose: expand protections to lower paid salary workers
- Updates salary threshold for EAP Exemption
- Raises salary threshold for Highly Compensated Employee Exemption
- Adds mechanism to regularly update the salary and compensation thresholds every 3 years

MINIMUM SALARY THRESHOLD

E.A.P. Exemption:

Date:	Minimum Salary:
July 1, 2024	\$844/week (\$43,888/year)
January 1, 2025	\$1,128/week (\$58,656/year)

Beginning July 1, 2027, the thresholds will be updated every three years.

HIGHLY COMPENSATED EMPLOYEE

The new DOL rule also raises the salary threshold for “highly compensated employees” under the FLSA.

Date:	Minimum Salary:
July 1, 2024	\$132,964/year
January 1, 2025	\$151,164/year

WHAT HAS NOT CHANGED?

- The duties tests
- Special Salary Levels
- Nondiscretionary bonuses and incentive payments



BEST PRACTICES

TAX IMPLICATIONS

- Increased tax liability on overtime wages
- Increased withholdings for Social Security and Medicare
- Lawsuits regarding in payment of overtime wages, resulting in additional tax withholdings



WHAT SHOULD YOU DO?

- Review compensation amounts
- Review job descriptions
- Provide training



33rd Annual
Tax Symposium

THANK YOU



Mariel G. Newhouse, Esq.

Associate

(248) 351-7076

(248) 359-6136 Fax

mnewhouse@maddinhauser.com

MH Maddin Hauser
Attorneys and Counselors

Maddin, Hauser, Roth & Heller, P.C.

One Towne Square, Fifth Floor, Southfield, MI 48076

p (248) 354-4030 f (248) 354-1422 maddinhauser.com

