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The Fair Labor Standards Act (FLSA) Exemption for Executive, Administrative, and Professional (EAP) Employees

The Fair Labor Standards Act (FLSA) establishes a federal minimum wage for most private and public sector employees and generally requires overtime compensation at a rate of one and one-half times an employee's regular hourly rate for hours worked beyond a 40-hour workweek. While broadly providing these employment protections to most employees, the FLSA also includes exemptions for certain specified employees. Section 13(a)(1) of the FLSA exempts from the statute's minimum wage and overtime pay requirements bona fide executive, administrative, and professional (EAP) employees, as well as outside sales and computer employees, and authorizes the Secretary of Labor to "define and delimit" this exemption through regulations.

The Department of Labor (DOL) first issued regulations to implement the EAP exemption in 1938. These regulations identified job duties that the employee had to perform to qualify for the exemption. DOL regulations issued in 1940 added a minimum salary threshold for the exemption. Although the salary and duty standards have changed over time, they continue to form the basis of the exemption. In general, to be considered an exempt EAP employee, the employee must satisfy a salary test and a duties test.

On April 26, 2024, DOL published a final rule that revised the salary thresholds for the exemption (in two phases) and established a methodology for updating the salary thresholds every three years, starting July 1, 2027. The rule took effect on July 1, 2024, but it has faced challenges. On June 28, 2024, the U.S. District Court for the Eastern District of Texas issued a preliminary injunction against the rule applying only to the State of Texas as an employer. The court maintained that the state was likely to succeed on its claim that the rule exceeded Section 13(a)(1)'s plain text. Joint resolutions—S. J. Res. 97 and H. J. Res. 166—providing for the rule's disapproval under the Congressional Review Act have also been introduced.

This In Focus examines the salary and duties tests that are used to identify exempt EAP employees and reviews how the salary thresholds have changed over the last 20 years.

EAP Exemption Salary Test

In general, to qualify for the EAP exemption, an employee must (1) be paid on a salary basis and (2) be paid a salary that is above an amount determined by DOL regulations.

The FLSA considers an employee to be paid *on a salary basis* if the employee regularly receives a predetermined amount on a weekly or less frequent basis that is not subject to reduction either because of variations in the quality or quantity of the work performed or because of absences occasioned by the employer or the operating requirements

of the business. DOL regulations provide that the EAP exemption may apply to administrative and professional employees compensated *on a fee basis* (i.e., the employee is paid an agreed sum for a single job regardless of the time required for its completion).

DOL's regulations provide that an employee must be compensated on a salary basis (or fee basis where permitted) at a rate of not less than \$844 per week (\$43,888 annually) for the EAP exemption to apply. This salary threshold, which applies in most cases, is referred to as the *standard* threshold. The weekly salary rate is lower—\$455 per week—for employees (other than those employed by the federal government) in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands. The weekly salary rate is \$380 for employees (other than those employed by the federal government) in American Samoa.

The EAP salary threshold is scheduled to increase to \$1,128 per week (\$58,656 per year) on January 1, 2025. Future updates are to take place every three years, starting July 1, 2027, and will set the salary threshold equal to the 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region, which in 2024 was the South.

Salary Rules for Certain Occupations

The EAP exemption salary test does not apply to physicians, lawyers, teachers, and outside sales workers who may be exempt if they satisfy other duty and credential requirements. Academic administrative personnel may be exempt if paid at a rate of not less than the amounts identified above or a salary at least equal to the entrance salary for teachers in the educational establishment at which they are employed. Employees in the motion picture producing industry need not be paid on a salary basis so long as they are compensated at a base rate of at least \$1,043 per week (or a proportionate amount based on the number of days worked) and the duties test requirements (described below) are met. DOL's final rule did not adjust this base rate, which was established in 2019.

EAP Exemption Duties Test

In addition to satisfying the salary test, an employee must perform specified duties to qualify for the EAP exemption. These duties vary based on whether an individual is an executive, administrative, or professional employee. DOL's regulations identify the following duties for certain exempt EAP employees:

Executive Employees

- The employee's primary duty is "management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof";
- The employee "customarily and regularly directs the work of two or more other employees"; and
- The employee "has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight."

Administrative Employees

- The employee's primary duty is "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."

Professional Employees

- The employee's primary duty is "the performance of work: (i) [r]equiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or (ii) [r]equiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor."

Highly Compensated Employees (HCEs)

Certain highly compensated EAP employees may be exempt from the FLSA's overtime pay requirement even if they do not perform all of the duties identified above. An employee paid on a salary basis with total annual compensation of at least \$132,964 is exempted from the requirement if the employee "customarily and regularly" performs any one or more of these duties. DOL maintains that a high level of compensation "is a strong indicator of an employee's exempt status, thus eliminating the need for a detailed analysis of the employee's job duties." The agency describes the phrase *customarily and regularly* to mean "a frequency that must be greater than occasional but which, of course, may be less than constant."

The HCE salary threshold is scheduled to increase to \$151,164 per year on January 1, 2025. Future updates are to set the salary threshold equal to the annualized 85th percentile of weekly earnings of full-time salaried workers nationally and are to take place every three years, starting July 1, 2027.

Prior DOL Rulemaking

The level at which the salary thresholds are drawn plays a decisive role in determining the EAP exemption's scope. All else equal, a *lower* salary threshold is associated with greater coverage of the exemption and fewer employees who would be entitled to overtime pay. Prior to 2024, DOL updated the EAP salary thresholds nine times, most recently in 2019. DOL rules that updated the salary thresholds in 2004, 2016, and 2019 are discussed in chronological order below. Summary information is in **Table 1**.

The 2004 rule created a single standard duties test and a single salary level for the EAP exemption. For several years prior to the 2004 rule, DOL had employed a dual approach to evaluating an employee's EAP exemption status. In particular, DOL rules allowed for a *long test*, which paired a lower salary threshold with quantitative limits on an employee's time in nonexempt work, and a *short test*, which had a higher salary threshold but applied a less stringent duties test that did not include a quantitative limit on nonexempt work. The 2004 rule applied a single salary threshold (\$455 per week), and created a separate salary threshold and duties requirement for HCEs.

The 2016 rule maintained the standard duties test for the EAP exemption. It raised the standard and HCE salary thresholds to \$913 per week and \$134,004 per year, respectively. DOL never enforced the rule and, before the rule could take effect, it was challenged in court. The U.S. District Court for the Eastern District of Texas in *Nevada v. U.S. Department of Labor* blocked implementation.

The 2019 final rule formally rescinded the 2016 final rule. It also increased the salary threshold from \$455 per week to \$684 per week; increased the annual salary threshold for the HCE exemption from \$100,000 to \$107,432; allowed up to 10% of the standard salary threshold to be comprised of nondiscretionary bonuses, incentive payments, and commissions; maintained the salary thresholds set by the 2004 rule for the U.S. territories; and increased the base rate level for employees in the motion picture producing industry from \$695 per week to \$1,043 per week.

Table 1. Summary of Salary Thresholds for EAP Exemptions in the 2004, 2016, 2019, and 2024 Rules

	2004	2016	2019	2024
Standard (per week)	\$455	\$913	\$684	7/1/2024: \$844 1/1/2025: \$1,128
HCE (per year)	\$100,000	\$134,004	\$107,432	7/1/2024: \$132,964 1/1/2025: \$151,164
U.S. Territories (per week)	\$455; AS: \$380	\$913; AS: \$767	\$455; AS: \$380	\$455; AS: \$380
MPPI (per week)	\$695	\$1,397	\$1,043	\$1,043

Sources: CRS analysis of 81 *Federal Register* 32391 (May 23, 2016), 84 *Federal Register* 51230 (September 27, 2019), and 89 *Federal Register* 32,842 (April 26, 2024).

Notes: The 2016 rule was finalized but did not become effective and was eventually invalidated by a federal district court. "U.S. Territories" include Puerto Rico, Guam, the U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa. HCE = highly compensated employees; AS = American Samoa; MPPI = motion picture producing industry.

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