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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 both a salary test and a duties test.

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 since 2004.

## 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 is currently applying a minimum salary threshold that was [established](#) in 2019. Under its 2019 [rule](#), an employee must be compensated on a salary basis (or fee basis where permitted) at a rate of not less than \$684 per week (\$35,568 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 federal government

employees) 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 federal government employees) in American Samoa.

## 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 proportional amount based on the number of days worked) and the duties test requirements (described below) are met.

## 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. Per DOL’s 2019 rule, an employee paid on a salary basis with total annual compensation of at least \$107,432 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.”

### DOL Rulemaking

DOL has updated the EAP salary thresholds ten times, most recently in 2024. DOL rules that updated or attempted to update the salary thresholds in 2004, 2016, 2019, 2024 are discussed in chronological order below and summarized 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 had 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 would have maintained the standard duties test for the EAP exemption. It would have 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 comprise 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.

On April 26, 2024, DOL published a final rule that revised the exemption’s salary thresholds and established a methodology for updating the salary thresholds every three years, starting July 1, 2027. On November 15, 2024, the U.S. District Court for the Eastern District of Texas vacated the rule, holding that DOL exceeded its authority under the FLSA when it made these changes. DOL initially appealed the decision, but the U.S. Court of Appeals for the Fifth Circuit later granted the agency’s motion to stay further proceedings as it reconsidered the rule.

Before it was vacated, the rule raised the EAP salary threshold to \$844, effective July 1, 2024; the threshold was to increase to \$1,128 per week on January 1, 2025. Future updates were to take place every three years starting July 1, 2027, and would have set the salary threshold equal to the 35<sup>th</sup> percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region. The 2024 rule also increased the HCE salary threshold to \$132,964 per year; this threshold was to increase to \$151,164 per year on January 1, 2025. Future updates would have set the HCE salary threshold equal to the annualized 85<sup>th</sup> percentile of weekly earnings of full-time salaried workers nationally, with updates to take place every three years starting July 1, 2027.

In vacating the rule, the Texas district court contended that the new thresholds effectively eliminate the duties test because many otherwise exempt employees would be deemed nonexempt simply because they do not meet the thresholds. The court also concluded that the rule’s automatic updates violate the *Administrative Procedure Act* because they place DOL’s “rulemaking on autopilot” when the changes should be subject to notice-and-comment requirements.

**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* 32842 (April 26, 2024).

**Notes:** The 2016 and 2024 rules were invalidated by federal district courts. “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.

**Sarah A. Donovan**, Specialist in Labor Policy  
**Jon O. Shimabukuro**, Legislative Attorney

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