

What Goes Up Does Not Come Down

Wage and Hour Updates - Including Proposed New
Salary Basis Minimums



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“Don’t panic now, there will be plenty of time for that later” - Gregg Easterbrook

- August 30, 2023: DOL proposed an increase to the FLSA’s annual salary-level threshold from \$35,568 to \$55,068.
- \$684 per week to \$1,059 per week
- Highly compensated from \$107,432 to \$143,988 per year
 - 85th percentile of full-time salaried workers nationally
- Final rule not in effect, so amount could change
 - Comment period through November 7, 2023
- Don’t panic: There will be lawsuits
- Built in mechanism to increase the amount every three years

A Little History

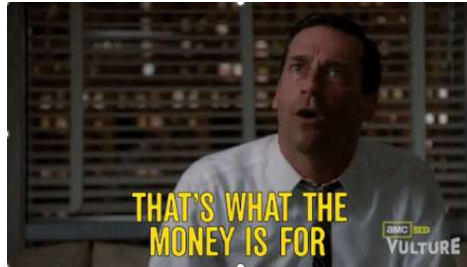
- 1938: \$30 per week
- 1940: Raised to \$50 per week for administrative and professional exemptions
- Increases in 1949, 1958, 1963, 1970, 1975
- 2004: \$455 per week
- 2016: \$913 per week
 - Never takes effect - enjoined by a federal judge
- September 2019, the DOL under the Trump administration raised the threshold to \$35,568 (\$684 per week) effective January 1, 2020

FLSA Exemption Reminders

- Executive
- Administrative
- Professional
 - Learned
 - Creative
- Computer Employee
- Outside Sales
- Highly Compensated

That's What the Money Is For! - Don Draper

- It takes more than salary
- The duties test are equally important, and more frequently failed
- Let's review - different for each of executive, administrative, and professional exemptions



Mistakenly Independent

- Proposed new independent contractor classification rule published October 14, 2022
- Biden administration pursuing a “totality of the circumstances” test
- DOL received 54,000 comments on the rule
- Current proposed effective date: ???
 - White House OMB received Final Rule September 28, 2023

What's the Difference Anyway?

- Trump era rule:
 - Five Factors
 - Particular focus on:
 - Nature and degree of control of the work
 - Worker's opportunity for profit or loss
- Proposed new rule:
 - Return to prior test
 - Six Factors, weighted equally
 - Overall, a "totality-of-the-circumstances analysis" that considers "economic reality"

Grab Bag - state and local variety pack

- Chicago eliminates the tip credit
- State minimum wage laws
 - Connecticut went to \$15.00 per hour June 1, 2023
 - New York
 - \$14.20 statewide
 - \$15.00 in NYC, Long Island, Westchester Count
 - Puerto Rico
 - \$9.50 per hour July 1, 2023
 - Maryland \$15.00 statewide January 1, 2024
 - Nevada minimum wage is adjusted annually based on a set formula.
 - July 1, 2023, \$11.25 for employees not offered qualifying health insurance and to \$10.25 per hour for employees offered qualifying health insurance.
 - July 1, 2024, there will be a uniform minimum wage of \$12.00 per hour for all employees.

California

- New state level minimum wage for certain jobs
- \$25 per hour for many healthcare workers
- \$20 per hour for fast food workers (April 1, 2024)



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