CUPA-HR Washington Update: How the DOL’s Changes to Overtime Rules Will Impact Campus

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CUPA-HR Webinar

Presenters

Josh Ulman
Chief Government Relations Officer,
CUPA-HR

Laurie R. Bishop
Partner,
Hirsch Roberts Weinstein LLP
CUPA-HR Webinar

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The purpose of this webinar is to provide an informational overview of the DOL overtime final rule. Content shared during the webinar does not constitute legal advice. We encourage members to speak with their institution’s legal counsel about appropriate ways to implement changes on their respective campuses.
Agenda

1. Overview of FLSA & Overtime Regulations
2. Previous Regulatory Updates to FLSA
3. 2023 Proposed Rulemaking
4. CUPA-HR’s Advocacy Efforts
5. 2024 Final Rule
6. Overtime Reg Guidance
7. Impact of Final Rule
8. Legal Challenges to the Final Rule
Overview of the FLSA & Overtime Regulations
Fair Labor Standards Act (FLSA)

- Establishes federal minimum wage and overtime pay standards
- Employer must track employees’ hours and pay premium “overtime rate” of 1.5 times the employees’ regular pay rate for hours worked over 40 per workweek
- FLSA contains various exemptions to overtime pay requirements, including for executive, administrative and professional employees – known as the EAP or “white collar” exemptions
- The FLSA states the Department of Labor will define and delimit by regulation the terms executive, administrative and professional employees from time to time
- The FLSA sets a federal “floor” and states and localities may impose additional wage and hour requirements
- This includes setting more stringent requirements for overtime pay exemptions
Federal Overtime Pay Regulations

Three part test for EAP exemption

1. Duties test
2. Salary basis test
3. Minimum salary level
Previous Regulatory Updates to the FLSA
2016 – Obama Administration Final Rule

- Updates salary threshold to $47,476 ($913/week)
- Creates automatic increases every 3 years indexed to the 40th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region
- Enjoined by court and rescinded by Trump
2019 – Trump Administration Final Rule

Updates salary threshold to $35,568 ($684/week)

Does NOT include automatic increases

Went into effect January 1, 2020
2023 Proposed Rule Making
September 2023

- Proposed increase to the salary threshold to $1,158 per week ($60,209 annually)

- Proposed automatic updates to the salary threshold every 3 years
  - Tie threshold to 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region

- No changes to duties or salary basis test
CUPA-HR’s Advocacy Efforts
Comments submitted in November 2023

Joined by 49 higher ed associations
Made four recommendations for DOL to consider:
• Do not increase salary threshold at this time
• Lower the proposed salary threshold
• Do not implement automatic updates
• Allow for 180 days to comply with any final rule

OIRA Meeting

CUPA-HR’s government relations team, CUPA-HR CEO and President, 4 national board members all participated

Similar recommendations made during meeting as were included in comments
2024 Final Rule
Two increases to the minimum salary threshold

Automatically updates salary level every 3 years based on the same methodology as January 1 level

No changes to duties or salary basis test
Increases to Minimum Salary Threshold

Current minimum salary threshold: $684 per week ($35,568 per year)

Beginning July 1, 2024: minimum salary threshold is $844 per week ($43,888 per year)

Beginning January 1, 2025: minimum salary threshold is $1,128 per week ($58,656 per year)

• Over a 60% increase from current level to new level effective January 1
Highly Compensated Employees

- Increases the highly compensated employee (HCE) salary threshold to the 85th percentile of weekly earnings for full-time salaried workers

- Set to $132,964 per year starting July 1, 2024

- Set to $151,164 per year starting January 1, 2025
Automatic Updates

• Implements automatic updates to occur every three years
  • First automatic updates after rule takes effect will be July 1, 2027
  • Automatic updates will be issued in Federal Register at least 150 days before going into effect
  • Reserves right for DOL to temporarily delay automatic update through separate NPRM process
Impact of Final Rules
Employees most likely to be impacted on college and university campuses beginning July 1

- Academic Advisor – Counselor*
- Student Admissions Counselor
- Student Residence Hall Manager
- According to CUPA-HR data, about 11,000 employees will be impacted
Employees most likely to be impacted on college and university campuses beginning January 1:

- Academic Advisor – Counselor*
- Student Admissions Counselor
- Administrative Specialist – Coordinator
- Student Success Professional*
- Student Financial Aid Counselor
- Student Residence Hall Manager
- Athletic Trainer - Physical Therapist
- Communications – Marketing Specialist
- Accountant
- Student Career Coordinator*
- Event Coordinator

According to CUPA-HR data, over 58,000 employees will be impacted
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<th>How Will Institutions Respond?</th>
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<tr>
<td><strong>Increase</strong></td>
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<td>Increase salaries for positions closest to salary threshold</td>
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<tr>
<td><strong>Reclassify</strong></td>
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<td>Reclassify employees from exempt to nonexempt if salary bump is too large</td>
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<tr>
<td><strong>Restructure</strong></td>
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<td>Restructure jobs, departments, etc.</td>
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Legal Challenges
Legal Challenges to the Final Rule

- Challenges to the rule are forthcoming from trade associations
  - Lawsuits to block rule from going into effect
  - Requests to extend effective date from July 1 to September 1

- July 1 level more likely than not to withstand legal challenge
  - Focus on changes to $43,888 salary level

- Challenges to January 1 level and automatic updates more likely than not to succeed
  - Once July 1 changes are made, begin planning for January 1 level, but keep in mind that it may be overturned
Have a Question?

Submit questions to our presenters using the Chat.
Thank You

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