



## REGULATORY SUMMARY

### US DEPARTMENT OF LABOR

#### OVERTIME RULE

APRIL 2024

On April 26, 2024, the US Department of Labor finalized changes to overtime pay regulations. According to the Fair Labor Standards Act (FLSA), employees who work over 40 hours a week are entitled to overtime compensation for the additional hours worked. While hourly workers typically qualify for overtime, salaried employees are eligible only if their salary falls below a specific threshold and if their job functions meet certain criteria. For example, executives, administrative and professional staff, and outside sales positions are typically exempt. Additionally, individuals classified as "highly compensated employees" are not entitled to overtime compensation for additional hours worked.

ARTBA and industry allies [submitted comments](#) on the rule on November 7, 2023, highlighting concerns with the Department of Labor's proposed rule. These included potential negative impacts on employer flexibility for remote work, limitations on employee career advancement, and restrictions on various employer flexibilities aimed at attracting and retaining talent (such as incentive pay, providing electronic devices, and cost-of-living compensation).

The new rule from the Department of Labor raises the minimum salary thresholds, potentially making more salaried workers eligible for overtime pay. Additionally, it establishes a method for these thresholds to adjust automatically every three years. The rule is scheduled to take effect on July 1, 2024. More information is available on [DOL's website](#).

#### **Key features of the rule are as follows:**

1. The minimum annual salary threshold for full-time employees will be raised to \$43,888 by July 1, 2024. Subsequently, it will increase again to \$58,656 by January 1, 2025.
2. Starting from January 1, 2025, the threshold will automatically increase every three years based on current wage data.
3. The threshold for highly compensated employees will increase to \$132,964 on July 1, 2024, and again to \$151,164 on January 1, 2025.

Businesses within the transportation construction sector may need to explore various methods to comply with the rule, including:

- Potentially raising the minimum salaries of employees who regularly perform overtime work.
- Reclassifying employees as non-exempt and ensuring payment of requisite overtime wages.
- Reviewing and revising company policies regarding equipment usage and total hours worked.
- Offering advance notice and providing training for newly reclassified non-exempt employees.

Please contact ARTBA's Prianka Sharma at [psharma@artba.org](mailto:psharma@artba.org) for more information.

## REDLINE REGULATORY CHANGES

### **PART 541—DEFINING AND DELIMITING THE EXEMPTIONS FOR EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL, COMPUTER AND OUTSIDE SALES EMPLOYEES**

#### **Adding § 541.5 Severability**

The provisions of this part are separate and severable and operate independently from one another. If any provision of this part is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision must be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding be one of utter invalidity or unenforceability, in which event the provision will be severable from part 541 and will not affect the remainder thereof.

#### **Amend § 541.100, by revising paragraph (a)(1) to read as follows:**

##### **§ 541.100 General rule for executive employees.**

(a) The term “employee employed in a bona fide executive capacity” in section 13(a)(1) of the Act shall mean any employee:

(1) Compensated on a salary basis **at not less than the level set forth in** ~~pursuant to § 541.600 at a rate of not less than \$684 per week (or \$455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal government, or \$380 per week if employed in American Samoa by employers other than the Federal government),~~ exclusive of board, lodging or other facilities;

#### **Amend § 541.200, by revising paragraph (a)(1) to read as follows:**

##### **§ 541.200 General rule for administrative employees.**

(a) The term “employee employed in a bona fide administrative capacity” in section 13(a)(1) of the Act shall mean any employee:

(1) Compensated on a salary or fee basis **at not less than the level set forth in** ~~pursuant to § 541.600 at a rate of not less than \$684 per week (or \$455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal government, or \$380 per week if employed in American Samoa by employers other than the Federal government),~~ exclusive of board, lodging or other facilities;

#### **Amend § 541.204, by revising paragraph (a)(1) to read as follows:**

##### **§ 541.204 Educational establishments.**

(a) The term “employee employed in a bona fide administrative capacity” in section 13(a)(1) of the Act also includes employees:

(1) Compensated on a salary or fee basis **at not less than the level set forth in § 541.600;** ~~a rate of not less than \$684 per week (or \$455 per week if employed in the Commonwealth of the Northern Mariana~~

~~Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal government, or \$380 per week if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging, or other facilities; or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which employed; and~~

#### **Subpart D—Professional Employees**

**Amend § 541.300, by revising paragraph (a)(1) to read as follows:**

##### **§ 541.300 General rule for professional employees.**

(a) The term “employee employed in a bona fide professional capacity” in section 13(a)(1) of the Act shall mean any employee:

~~(1) Compensated on a salary or fee basis pursuant to § 541.600 at a rate of not less than \$684 per week (or \$455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal government, or \$380 per week if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging or other facilities; and~~

#### **Subpart E—Computer Employees**

**Amend § 541.400, by revising the first sentence of paragraph (b) to read as follows:**

##### **§ 541.400 General rule for computer employees.**

(b) The section 13(a)(1) exemption applies to any computer employee who is compensated on a salary or fee basis at a rate of not less than **the level set forth in § 541.600.**

#### **Subpart G—Salary Requirements**

**Revise § 541.600 to read as follows:**

##### **§ 541.600 Amount of salary required.**

(a) ***Standard salary level.*** To qualify as an exempt executive, administrative or professional employee under section 13(a)(1) of the Act, an employee must be compensated on a salary basis at a rate **per week** of not less than **the amount set forth in paragraphs (a) (1) through (3) of this section, \$684 per week (or \$455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal Government, or \$380 per week if employed in American Samoa by employers other than the Federal Government),** exclusive of board, lodging or other facilities, **unless paragraph (b) or (c) of this section applies.** Administrative and professional employees may also be paid on a fee basis, as defined in § 541.605.

**(1) Beginning on July 1, 2024, \$844 per week (the 20th percentile of weekly earnings of full-time nonhourly workers in the lowest-wage Census Region and/or retail industry nationally).**

**(2) Beginning on January 1, 2025, \$1,128 per week (the 35th percentile of weekly earnings of full-time nonhourly workers in the lowest-wage Census Region).**

**(3) As of July 1, 2027, the level calculated pursuant to § 541.607(b)(1).**

(b) *Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, U.S. Virgin Islands.* To qualify as an exempt executive, administrative, or professional employee under section 13(a)(1) of the Act, an employee in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands employed by employers other than the Federal Government must be compensated on a salary basis at a rate of not less than \$455 per week, exclusive of board, lodging or other facilities.

Administrative and professional employees may also be paid on a fee basis, as defined in § 541.605. The required amount of compensation per week may be translated into equivalent amounts for periods longer than one week. For example, the \$684 per week requirement will be met if the employee is compensated biweekly on a salary basis of not less than \$1,368, semimonthly on a salary basis of not less than \$1,482, or monthly on a salary basis of not less than \$2,964. However, the shortest period of payment that will meet this compensation requirement is one week.

(c) *American Samoa.* To qualify as an exempt executive, administrative, or professional employee under section 13(a)(1) of the Act, an employee in American Samoa employed by employers other than the Federal Government must be compensated on a salary basis at a rate of not less than \$380 per week, exclusive of board, lodging or other facilities. Administrative and professional employees may also be paid on a fee basis, as defined in § 541.605. In the case of academic administrative employees, the compensation requirement also may be met by compensation on a salary basis at a rate at least equal to the entrance salary for teachers in the educational establishment by which the employee is employed, as provided in § 541.204(a)(1).

(d) *Frequency of payment.* The salary level requirement may be translated into equivalent amounts for periods longer than one week. For example, the \$1,128 per week requirement described in paragraph (a)(2) of this section would be met if the employee is compensated biweekly on a salary basis of not less than \$2,256, semimonthly on a salary basis of not less than \$2,444, or monthly on a salary basis of not less than \$4,888. However, the shortest period of payment that will meet this compensation requirement is one week. In the case of computer employees, the compensation requirement also may be met by compensation on an hourly basis at a rate not less than \$27.63 an hour, as provided in § 541.400(b).

(e) *Alternative salary level for academic administrative employees.* In the case of academic administrative employees, the salary level requirement also may be met by compensation on a salary basis at a rate at least equal to the entrance salary for teachers in the educational establishment by which the employee is employed, as provided in § 541.204(a)(1). In the case of professional employees, the compensation requirements in this section shall not apply to employees engaged as teachers (see § 541.303); employees who hold a valid license or certificate permitting the practice of law or medicine or any of their branches and are actually engaged in the practice thereof (see § 541.304); or to employees who hold the requisite academic degree for the general practice of medicine and are engaged in an internship or resident program pursuant to the practice of the profession (see § 541.304). In the case of medical occupations, the exception from the salary or fee requirement does not apply to pharmacists, nurses, therapists, technologists, sanitarians, dietitians, social workers, psychologists, psychometrists, or other professions which service the medical profession.

(f) *Hourly rate for computer employees.* In the case of computer employees, the compensation requirement also may be met by compensation on an hourly basis at a rate not less than \$27.63 an hour, as provided in § 541.400(b).

(g) *Exceptions to the standard salary criteria.* In the case of professional employees, the compensation requirements in this section shall not apply to employees engaged as teachers ( *see* § 541.303); employees who hold a valid license or certificate permitting the practice of law or medicine or any of their branches and are actually engaged in the practice thereof ( *see* § 541.304); or to employees who hold the requisite academic degree for the general practice of medicine and are engaged in an internship or resident program pursuant to the practice of the profession ( *see* § 541.304). In the case of medical occupations, the exception from the salary or fee requirement does not apply to pharmacists, nurses, therapists, technologists, sanitarians, dietitians, social workers, psychologists, psychometrists, or other professions which service the medical profession.

Amend § 541.601 by revising paragraph (a), the first sentence of paragraph (b)(1), and paragraph (b)(2) to read as follows:

**§ 541.601 Highly compensated employees.**

(a) An employee shall be exempt under section 13(a)(1) of the Act if the employee receives total annual compensation of not less than the amount set forth in paragraph (a)(1) through (4) of this section, and the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative, or professional employee identified in subpart B, C, or D of this part:

(1) Beginning on January 1, 2024, \$132,964 per year (the annualized earnings amount of the 80th percentile of full-time nonhourly workers nationally). ~~an employee with total annual compensation of at least \$107,432 is deemed exempt under section 13(a)(1) of the Act if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee as identified in subparts B, C or D of this part.~~

(2) Beginning on January 1, 2025, \$151,164 per year (the annualized earnings amount of the 85th percentile of full-time nonhourly workers nationally). ~~Where the annual period covers periods both prior to and after January 1, 2020, the amount of total annual compensation due will be determined on a proportional basis.~~

(3) As of July 1, 2027, the total annual compensation level calculated pursuant to § 541.607(b)(2).

(4) Where the annual period covers periods during which multiple total annual compensation levels apply, the amount of total annual compensation due will be determined on a proportional basis.

(b) (1) “Total annual compensation” must include at least a weekly amount equal to that required by § 541.600(a)(1) through (3) paid on a salary or fee basis as set forth in §§ 541.602 and 541.605, except that § 541.602(a)(3) shall not apply to highly compensated employees.

(2) If an employee's total annual compensation does not total at least the amount ~~set forth in specified in the applicable subsection of paragraph (a) of this section by the last pay period of the 52-week period,~~ the employer may, during the last pay period or within one month after the end of the 52-week period, make one final payment sufficient to achieve the required level. For example, for a 52-week period beginning January 1, 2025, an employee may earn \$135,000 in base salary, and the employer may anticipate based upon past sales that the employee also will earn \$20,000 in commissions. However, due

to poor sales in the final quarter of the year, the employee only earns \$14,000 in commissions. In this situation, the employer may within one month after the end of the year make a payment of at least \$2,164 to the employee. Any such final payment made after the end of the 52-week period may count only toward the prior year's total annual compensation and not toward the total annual compensation in the year it was paid. If the employer fails to make such a payment, the employee does not qualify as a highly compensated employee, but may still qualify as exempt under subpart B, C, or D of this part. ~~by the last pay period of the 52-week period, the employer may, during the last pay period or within one month after the end of the 52-week period, make one final payment sufficient to achieve the required level. For example, for a 52-week period beginning January 1, 2020, an employee may earn \$90,000 in base salary, and the employer may anticipate based upon past sales that the employee also will earn \$17,432 in commissions. However, due to poor sales in the final quarter of the year, the employee actually only earns \$12,000 in commissions. In this situation, the employer may within one month after the end of the year make a payment of at least \$5,432 to the employee. Any such final payment made after the end of the 52-week period may count only toward the prior year's total annual compensation and not toward the total annual compensation in the year it was paid. If the employer fails to make such a payment, the employee does not qualify as a highly compensated employee, but may still qualify as exempt under subparts B, C, or D of this part.~~

Amend § 541.602 by revising the first sentence of paragraph (a)(3) and the first sentence of paragraph (a)(3)(i) to read as follows:

#### **§ 541.602 Salary basis.**

(a)(3) Up to ten percent of the salary amount required by § 541.600(a) ~~through (c)~~ may be satisfied by the payment of nondiscretionary bonuses, incentives and commissions, that are paid annually or more frequently.

(i) If by the last pay period of the 52-week period the sum of the employee's weekly salary plus nondiscretionary bonus, incentive, and commission payments received is less than 52 times the weekly salary amount required by § 541.600(a) ~~through (c)~~, the employer may make one final payment sufficient to achieve the required level no later than the next pay period after the end of the year.

Amend § 541.604 by

a. Revising the second, third, and fourth sentences of paragraph (a) and;

b. Revising the third sentence in paragraph (b).

#### **§ 541.604 Minimum guarantee plus extras.**

(a) An employer may provide an exempt employee with additional compensation without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly-required amount paid on a salary basis. Thus, for example, ~~under the salary requirement described in § 541.600 (a)(2), an exempt employee guaranteed at least \$1,128 \$684~~ each week paid on a salary basis may also receive additional compensation of a one percent commission on sales. An exempt employee also may receive a percentage of the sales or profits of the employer if the employment arrangement also includes a guarantee of at least ~~\$1,128 \$684~~ each week paid on a salary basis. Similarly, the exemption is not lost if an exempt employee who is guaranteed at

least ~~\$1,128~~ ~~\$684~~ each week paid on a salary basis also receives additional compensation based on hours worked for work beyond the normal workweek. Such additional compensation may be paid on any basis (e.g., flat sum, bonus payment, straight-time hourly amount, time and one-half or any other basis), and may include paid time off.

(b) An exempt employee's earnings may be computed on an hourly, a daily or a shift basis, without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly required amount paid on a salary basis regardless of the number of hours, days or shifts worked, and a reasonable relationship exists between the guaranteed amount and the amount actually earned. The reasonable relationship test will be met if the weekly guarantee is roughly equivalent to the employee's usual earnings at the assigned hourly, daily or shift rate for the employee's normal scheduled workweek. **Thus, for example under the salary requirement described in § 541.600(a)(2), an exempt employee guaranteed compensation of at least \$1,210 for any week in which the employee performs any work, and who normally works four or five shifts each week, may be paid \$350 per shift without violating the \$1,128 per week salary basis requirement.** ~~Thus, for example, an exempt employee guaranteed compensation of at least \$725 for any week in which the employee performs any work, and who normally works four or five shifts each week, may be paid \$210 per shift without violating the \$684 per week salary basis requirement.~~ The reasonable relationship requirement applies only if the employee's pay is computed on an hourly, daily or shift basis. It does not apply, for example, to an exempt store manager paid a guaranteed salary per week that exceeds the current salary level who also receives a commission of one-half percent of all sales in the store or five percent of the store's profits, which in some weeks may total as much as, or even more than, the guaranteed salary.

**Amend § 541.605 by revising paragraph (b) to read as follows:**

**§ 541.605 Fee basis.**

(b) To determine whether the fee payment meets the minimum amount of salary required for exemption under these regulations, the amount paid to the employee will be tested by determining the time worked on the job and whether the fee payment is at a rate that would amount to at least the minimum salary per week, as required by ~~§§ 541.600(a) through (c) and 541.602(a), §§ 541.600(a) and 541.602(a),~~ if the employee worked 40 hours. **Thus, for example under the salary requirement described in § 541.600(a)(2), an artist paid \$600 ~~\$350~~ for a picture that took 20 hours to complete meets the \$1,128 ~~\$684~~ minimum salary requirement for exemption since earnings at this rate would yield the artist \$1,200 ~~\$700~~ if 40 hours were worked.**

**Add § 541.607 to read as follows:**

**§ 541.607 Regular updates to amounts of salary and compensation required.**

(a) *Initial update* —(1) *Standard salary level.* Beginning on July 1, 2024, the amount required to be paid per week to an exempt employee on a salary or fee basis, as applicable, pursuant to § 541.600(a)(1) will be not less than \$844.

(2) *Highly compensated employees.* Beginning on July 1, 2024, the amount required to be paid in total annual compensation to an exempt highly compensated employee pursuant to § 541.601(a)(1) will be not less than \$132,964.

(b) *Future updates* —(1) *Standard salary level.* (i) As of July 1, 2027, and every 3 years thereafter, the amount required to be paid to an exempt employee on a salary or fee basis, as applicable, pursuant to § 541.600(a) will be updated to reflect current earnings data.

(ii) The Secretary will determine the future update amounts by applying the methodology in effect under § 541.600(a) at the time the Secretary issues the notice required by paragraph (b)(3) of this section to current earnings data.

(2) *Highly compensated employees.* (i) As of July 1, 2027, and every 3 years thereafter, the amount required to be paid in total annual compensation to an exempt highly compensated employee pursuant to § 541.601(a) will be updated to reflect current earnings data.

(ii) The Secretary will determine the future update amounts by applying the methodology used to determine the total annual compensation amount in effect under § 541.601(a) at the time the Secretary issues the notice required by paragraph (b)(3) of this section to current earnings data.

(3) *Notice.* (i) Not fewer than 150 days before each future update of the earnings requirements under paragraphs (b)(1) and (2) of this section, the Secretary will publish a notice in the **Federal Register** stating the updated amounts based on the most recent available 4 quarters of CPS MORG data, or its successor publication, as published by the Bureau of Labor Statistics.

(ii) No later than the effective date of the updated earnings requirements, the Wage and Hour Division will publish on its website the updated amounts for employees paid pursuant to this part.

(4) *Delay of updates.* A future update to the earnings thresholds under this section is delayed from taking effect for a period of 120 days if the Secretary has separately published a notice of proposed rulemaking in the **Federal Register**, not fewer than 150 days before the date the update is set to take effect, proposing changes to the earnings threshold(s) and/or updating mechanism due to unforeseen economic or other conditions. The Secretary must state in the notice issued pursuant to paragraph (b)(3)(i) of this section that the scheduled update is delayed in accordance with this paragraph (b)(4). If the Secretary does not issue a final rule affecting the scheduled update to the earnings thresholds by the end of the 120-day extension period, the updated amounts published in accordance with paragraph (b)(3) of this section will take effect upon the expiration of the 120-day period. The 120-day delay of a scheduled update under this paragraph will not change the effective dates for future updates of the earnings requirements under this section.