

HR Updates: Adjusting to the New FLSA Exemption Rules and Noncompete Ban

May 15, 2024



HR Update: Salary Threshold Increases for FLSA Exemption

4/23/2024: The US DOL formally announced a final rule increasing the salary thresholds for FLSA exemption.

Executive/Administrative/Professional Exemption Salary Thresholds

Effective July 1, 2024	Effective Jan.1, 2025	Effective Jul 1, 2027
Annual: \$43,888	Annual: \$58,656	Salary thresholds will increase every 3 years based on an analysis to be conducted using up-to-date wage data
Weekly: \$844	Weekly: \$1,128	
Computer Professionals (only) Hourly: \$27.63**	Computer Professionals (only) Hourly: \$27.63**	

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Highly Compensated Employee Exemption Salary Thresholds

Effective July 1, 2024	Effective Jan.1, 2025	Effective Jul 1, 2027
Annual: \$132,964	Annual: \$151,164	Salary thresholds will increase every 3 years based on an analysis to be conducted using up-to-date wage data
Weekly Guarantee: \$844 (but must total annual amount)	Weekly Guarantee: \$1,128 (but must total annual amount)	

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Lessons Learned from 2016

- Legal challenges are likely – potential for final rule to be overturned
- Prepare and strategize in advance
- Make adjustments at time of effective date
- Beware of wage compression

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Advance Preparations

Step 1:

- Prepare a report of all exempt employees' pay rates
- Identify which employees will not meet or exceed the threshold for:
 - 7/1/2024: \$43,888
 - 1/1/2025: \$58,656

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Advance Preparations

Step 2:

- Review time records to identify how many hours each affected employee typically works per week
- If not requiring time records for exempt employees, ask the employee directly and meet with their manager to better understand responsibilities that may require work outside of normal hours

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Advance Preparations

Step 3:

- Review collected data to better understand and identify whether each affected employee needs to be exempt or could be reclassified as nonexempt
- Take into consideration the added potential cost of overtime

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Advance Preparations

Step 4:

- Document employee changes and file
- Prepare compensation/status change memos, distribute to affected employees, and meet with them to clarify
- Update job descriptions and HRIS or other systems of record
- Monitor and continue to communicate as needed

HR Update: FTC Bans Noncompete Agreements

4/23/2024: The FTC formally announced the final rule banning noncompete agreements.

Why the Federal Trade Commission?

- Noncompete agreements are being viewed as an unfair competition practice for:
 - Companies, particularly new startups, by limiting access to talent and throttling new business formation
 - Employees, by limiting their alternative employment opportunities and limiting the potential for wage competition and growth
- Determined to be a violation of Section 5 of the FTC Act “Unfair Methods of Competition”

HR Update: FTC Bans Noncompete Agreements

4/23/2024: The FTC formally announced the final rule banning noncompete agreements.

Effective date: 9/4/2024 (or 120 days after publication in the Federal Register 5/7)

EXISTING Noncompete Agreements	FUTURE Noncompete Agreements
Senior Executives: can remain in force	Senior Executives: banned
All other employees: no longer valid	All other employees: banned

HR Update: FTC Bans Noncompete Agreements

Requirements for Existing Noncompete Agreements

- Identify qualifying senior executives who are defined as:
 - earning > \$151,164 annually, and
 - in policy-making positions
- Identify employees under a noncompete agreement who not qualified as senior executives:
 - Provide written communication that the noncompete is no longer valid and will not be enforced
 - Model language: https://www.ftc.gov/system/files/ftc_gov/images/new-rule-image-noncompete-rulev3.png

HR Update: FTC Bans Noncompete Agreements

Exceptions

- **Bona Fide Sales of Business:** if there is a noncompete tied into the purchase agreement of a business (or a person's ownership interest)
- **Existing Causes of Action:** if there is already a cause of action underway for violation of an existing noncompete that is effective prior to the effective date of the ban, then it is still valid

HR Update: FTC Bans Noncompete Agreements

Alternatives

- **Nondisclosure Agreements (NDAs) and Trade Secret Laws:** still valid
- **Retention Strategies:** instead of legally binding the employee to your organization, make them want to stay

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Retention Strategies

Employee Benefits

Lots of opportunities to create retention incentives in benefit structure:

- Identify which benefits motivate your employees the most
- Consider vesting schedules for retirement plans
 - Graded vesting
 - Cliff vesting
- Consider tiered or additional benefits based on seniority

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Retention Strategies

Work/Life Balance

Employee burnout is real and poor work-life balance is a commonly identified reason provided for leaving an employer throughout various studies

- Set realistic expectations and communicate them to your employee
- When you see your employee overextending themselves, intervene
- Provide the space for your employee to feel comfortable letting you know when they have reached their limit

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Retention Strategies

Employee Needs:

Maslow's Hierarchy of Needs

- Approach to employee motivation based on 5 different ascending levels of needs (from bottom to top):
 - Physiological
 - Safety
 - Belongingness
 - Esteem
 - Self-Actualization



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Retention Strategies

Physiological

- Base level of employee needs, represents need for basic survival needs, such as shelter, food, and water
- Most easily met by providing a fair wage
- Most easily exceeded by providing a competitive wage

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Retention Strategies

Safety

- Next level of need: represents the employee's need to feel secure in their environment
- Effective and regular performance feedback can assuage job security fears
- Ensure the work environment is safe as well, both for psychological safety and physical safety

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Retention Strategies

Belongingness

- Mid-tier level of need: represents the employee's need to feel accepted and welcomed in their environment
- Encourage team communication and interactions
- Consider a mentorship or work buddy program
- If you notice someone constantly “on the outside”, intervene and help facilitate conversation with others

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Retention Strategies

Esteem

- Upper-tier level of need: represents the employee's need to feel recognized and respected for what they do
- Employee recognition programs: both formal and regular informal recognition
- Educate employees on the contribution of all departments and the importance of all roles within the organization
- Celebrate your employees' milestones: birthdays, anniversaries, life events, certification, and any other wins

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Retention Strategies

Self-Actualization

- Uppermost-tier level of need: represents the employee's need to feel they are making the most out of themselves and reaching their potential
- Employee Development Programs: go beyond the skills needed immediately and provide development opportunities to grow new skills necessary for promotion/growth
- Communicate 1:1 with employees to identify what their professional goals are and help them set milestones
- Create a culture of internal movement and pathways with succession planning

HR Update: Legal Challenges

Legal challenges are not only anticipated but are already happening:

- Ryan, LLC v. Federal Trade Commission
 - 1st challenge, currently in federal court in TX Northern District
- Chamber of Commerce for the United States of America et al v. Federal Trade Commission
 - Currently in federal court in TX Eastern District challenging the FTC's authority in the rule
- ATS Tree Services, LLC v. Federal Trade Commission
 - Currently in federal court in PA Eastern District
- List as of 4/30, more challenges to the FTC Final Rule are anticipated

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Assessment

Assess the current state of personnel files, posters/notices, policies, and processes and providing recommendations for improvement



Analysis

Conduct analyses on personnel components, such as compensation, benefits, or employee satisfaction; to ensure your people strategy is designed for success.



Handbooks, Policies & Procedures

Create needed handbooks, policies, and procedures to help create the framework of success that meets all your compliance needs.



Training

Develop training based on your company's needs, whether it is for employees, new supervisors, or even new HR staff.



Employee Life Cycle

Provide consultation and support on all stages of the employee life cycle.



Benefits and Compensation Market Analysis and Benchmarking

Ensure your compensation and benefits packages are competitive.