

Pennsylvania Increases Minimum Wage Threshold for Exempt Employees

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The Pennsylvania Department of Labor and Industry (“DLI”) recently [amended](#) its regulations interpreting the Pennsylvania Minimum Wage Act (“PMWA”), increasing the minimum salary for employees to qualify for an executive, administrative, or professional exemption (the “white collar” exemptions) to the overtime requirement. As a result, the PMWA’s minimum salary requirements for these exemptions now match the salary levels currently required under the federal Fair Labor Standards Act (“FLSA”). Subsequently, Pennsylvania’s minimum salary requirements will exceed the FLSA’s minimum threshold, increasing annually on October 3 of each year until 2023, when automatic increases will occur every three years.

Gradual Increase of the Minimum Weekly Salary Threshold

The PMWA’s final rule increases the salary threshold in three steps:

| Date | Minimum Salary Threshold |
|-----------------|--|
| October 3, 2020 | \$684 per week (\$35,568 annually)* *This is the current level required by federal law, which has been in effect since January 1, 2020. |
| October 3, 2021 | \$780 per week (\$40,560 annually) |
| October 3, 2022 | \$875 per week (\$45,500 annually) |

Who Qualifies for the “White Collar” Exemptions?

The PMWA establishes the requirements under which employers must pay employees not less than the minimum wage—\$7.25 per hour—for all hours worked and overtime of 1.5 times an employee’s regular rate of pay for any hours worked in excess of 40 hours per workweek. However, [Section 5\(a\)\(5\)](#) of the PWMA provides an exemption for employers from both minimum wage and overtime pay for employees employed in a “bona fide executive, administrative, or professional capacity.”

To qualify for these exemptions, an employee must meet the following criteria:

1. **Executive Exemption:**

- Satisfies the above minimum salary threshold;
- Has as his or her primary duty the management of the enterprise or the management of a customarily recognized department or subdivision (e.g., CEO, human resources director, office manager);
- Customarily and regularly directs at least two full-time employees; and
- Has the authority to hire or fire employees.

2. **Administrative Exemption:**

- Satisfies the above minimum salary threshold;
- Primarily engages in office or non-manual work directly related to management or general business operations of the employer or the employer's customers (e.g., academic advisor, consultant, insurance claim adjuster); and
- Integral to this primary duty, exercises discretion and independent judgment with respect to "matters of significance" (not defined in the regulation).

3. **Professional Exemption:**

- Satisfies the above minimum salary threshold;
- Has as his or her primary duty work requiring ***either***
 - the knowledge of an "advanced type" in a field of science or learning customarily acquired by a prolonged course of specialized instruction and study (e.g., engineer, doctor, CPA), ***or***
 - originality or creativity in character in a recognized field of artistic endeavor (e.g., architect, musician, author).

These revisions to the duties tests for each exemption more closely align them with their federal counterparts.

Additional Significant Changes

Every three years, beginning October 3, 2023, the salary threshold will increase [automatically](#), based on the average wages of exempt occupations in Pennsylvania. Similar to the [recent](#) overtime rule changes in the FLSA, employers may satisfy up to 10 percent of an individual's salary threshold with the payment of nondiscretionary bonuses, incentives, and/or commissions that are paid annually or more frequently.

Further, according to the DLI, Pennsylvania employers must follow *both* the federal overtime rules and the overtime requirements of the PWMA. Where there are differences between the federal and state rules, employers must follow the rules that are most beneficial to the employee. For example, unlike the FLSA, the PWMA does not recognize an exemption for computer professionals or highly compensated employees. Accordingly, under Pennsylvania's rules, such employees are considered nonexempt workers who are eligible for overtime pay, unless such employees satisfy one of the other exemptions.

What Pennsylvania Employers Should Do Now

- Review your employees' exemption status to ensure compliance with state and federal requirements, keeping in mind that a compliant job description, by itself, is insufficient to satisfy the exemption requirements; employees must in fact perform the primary duties, exercise the required discretion and independence, etc.
- Consider whether the duties, responsibilities, skill requirements, etc., of various positions should be revised in light of the increases in the salary threshold going into effect next year and in subsequent years, and/or whether wages need to be increased.
- With respect to hiring, review job descriptions and salary levels to determine if revisions are warranted going forward.

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