

- You're listening to the HR Mixtape, your podcast with the perfect mix of practical advice, thought provoking interviews and stories that just hit different, so that work doesn't have to feel. well, like work. Now, your host, Shari Simpson.

- Joining me today is Corinne Tirone. Corinne is the Senior Director of Government Relations here at Paylocity. She is an attorney with over 13 years of experience in legal research, payroll and HR compliance. Her focus at Paylocity is on monitoring the legislative landscape at the federal, state and local levels, to help inform the organization's development projects, compliance strategy, and risk mitigation plans. Corrine, it's so good to have you back on the podcast today.

- Happy to be here, thanks for having me.

- So I'm glad that I have you back on the podcast. I wanted to discuss the final rule that was recently issued by the Department of Labor, around the changes for the earnings threshold for overtime exemption. I know it's something we talked about a few months ago on the podcast, when the DOL issued the notice of proposed rulemaking. So hoping that we could kind of talk more now that the rule has been finalized.

- Yeah, absolutely. So looking back, when we spoke about this in the fall of 2023, the Department of Labor had issued a notice of proposed rulemaking on this subject, and basically that represents a start to the rulemaking process. An agency that is creating or updating a rule will issue a proposed rule, and then there is a notice and comment period. So in the fall, the DOL shared the reason for the rule change, what they anticipated that final rule would look like, and then invited the public to make a comment on that proposed rule. And people did, there were a ton of comments. The DOL read through and considered over 30,000 comments before issuing their final rule on April 23rd. And there were some changes in the final rule that was ultimately adopted.

- Okay, before we get into those changes, maybe you could refresh our listeners, in totality what is this rule in general?

- Yeah, of course. So the DOL was examining the earnings threshold that could exempt certain employees from the requirements of the Fair Labor Standards Act. Meaning they're updating the requirement as to how much money an employee has to earn at minimum to be considered for exemption from overtime compensation, from timekeeping requirements, and other requirements under the FLSA. This new final rule applies to EAP exemptions, which are executive, administrative and professional exemptions. As part of the... There's like a three-prong test to determine whether an employee can be classified as exempt from the FLSA, and one of those is a requirement that the employee earn at least a certain amount of pay on a salary basis. So that existing

level today is relatively low. It's \$684 per week, which works out to \$35,568 annually. There are also changes to the earnings threshold for highly compensated employees or HCEs, and those are also included in this final rule. And these levels, among other things, have been updated in this new final rule that, again, was issued on April 23rd of this year, 2024.

- A lot of information, and I know that the final rule has definitely a lot of details in it. We talked about some of the things that we were gonna see back in the fall. Let's dive into that a little bit and let's start with the most relevant details. What are the earning levels in the final rule?

- Yeah, that's what everyone wants to know, right? So the DOL has updated the minimum salary levels for the EAP exemptions from \$684 per week to \$844 per week, which works out to \$43,888 annually. And that change is gonna be effective on July 1st of this year, 2024. But that level is going to increase again on January 1st, 2025 to \$1,128 per week, which is \$58,656 annually. There will also be a change to the earnings threshold for highly compensated employees, and that earnings threshold for HCEs will become \$132,964 annually on July 1st, with another increase again on January 1st to \$151,164.

- Why do you think that there is a tiered increase with those two effective dates? And I guess the reason I'm asking that is because they're actually so close together.

- Yeah, I know. They're close together and they're both big increases, right? And the DOL actually did address that and essentially said that they're, you know, grappling with a few different variables. First being just the changing dynamics of the labor market, which I think, you know, you've probably talked about that on a bunch of your podcasts and webinars over the past couple of years, but there've been a ton of rapid changes in the labor market, and the DOL expressed the desire to accurately capture reasonable compensation levels in today's market to apply the exemption test. Also, there have been different methodologies used historically by the DOL when coming to their determination of what earnings levels to use. And without getting like too deeply into what those methodologies are and what the math actually looks like, the July 1st change reflects what the level would be using an older methodology, and then the January 1st update is using their newly adopted methodology. And the DOL is saying that this change, this methodology change, better fulfills the department's obligation under the statute to define and delimit who is employed in a bonafide EAP capacity. So we have two different dates to start preparing for, but another important detail is the new mechanism that the DOL installed to provide for future updates to the earning threshold levels. The DOL is now going to be updating these levels every three years. So beginning in 2027, we're gonna have to be, you know, kind of thinking about this on a pretty routine cadence. But for

the purposes of today, what we really need to prepare for are those dates that are coming soon, which is this July 1st update and then a fast follow on January one.

- Yeah, and I suspect that this will impact a large population, just like it was going to impact our large populations when Obama had proposed this many years ago, and I know we joked about that, having a little bit of HR trauma from preparing for that and then it didn't go live. Has the DOL forecasted potentially how many employees could be affected by these changes?

- They did, and I'll address that really quickly, and then I wanna circle back to what happened under the Obama administration, 'cause you're raising a really important point there. The DOL estimates that around 4 million workers are going to be affected by the changes to the EAP exemption salary threshold, and around 300,000 will be affected by the HCE changes. But I think, you know, it's important to note that there are likely to be, you know, legal challenges to this change, just like there were under the Obama administration, because these changes are really significant. So, you know, as of this moment, I think that the prudent thing to do is to start preparing for this and begin to, you know, think through that analysis, think through how you would manage this for your organization, but also like kind of keep an eye out for the fact that like this could change between now and then, potentially.

- When we talked about this in the fall, I think that the proposed rule included a level that was a little bit lower than what we're gonna see in the final January 1st, 2025 levels. Is there a reason why the final rule ended up being higher?

- Yeah, that's a great question and I think that we actually touched on that a little bit when we talked about this together a few months ago. We were expecting that it could change, because the OL had actually made a point in that notice of proposed rulemaking to say, you know, we will use the best economic data we have available to us at the time that we issue this final rule to make sure that we are really appropriately addressing what that target compensation should be. So, you know, we did expect that that target might move a little bit, and what we're seeing now is that those levels have been set based on that new data, what is available to them now as they're actually creating this final rule, and future changes will also be based on the data available at that point in time. There's also some consideration in the proposed rule that there is going to be an update potentially to US territories, but they ended up ultimately not adopting that in the final rule. So for now, the levels in US territories will remain the same.

- So now that we have this finalized information, we have our effective dates on the calendar, what can our listeners do to start

preparing?

- I think, you know, with these final rule numbers available and the first effective date only being about, you know, two months away, as of the time that we're recording this, organizations really are gonna need to start reviewing how much of an impact that final rule will actually have on their operation. So, you know, listeners of our previous discussion may have already started this process, you could be ahead of the game, but if you're not, you know, now's the time. Now's the time for action if you have employees that might be affected by these changes. So there are really a number of factors to consider here, but a great starting point is identifying your impacted population. Which employees are currently classified as exempt, but don't meet that new compensation requirement set by the final rule. Once you've got that, you know, body of individuals identified, the decision is ultimately gonna be whether or not you want to increase their compensation to remain in line with the requirements of the exemption, or if you wanna remove the employee's exempt classification. Something important, you know, for any determination, is gonna be that new mechanism that I mentioned of, that ongoing increase. So to keep that in mind as you're making this determination today, like you can bump up to the July 1 threshold, you can bump up to the Jan 1 threshold, but that's gonna continue to rise over time and that it's going... And those thresholds are going to be mirroring, you know, whatever is happening in the labor market. So as you are going through this analysis and thinking about what you wanna do, you have to think about whether or not you wanna continue to meet that potentially rising level over the duration. So is it a good time to consider removing that exemption and avoiding those increases in the future? And if you are considering removing that exemption, like what are some of the costs that could come along with that? It would mean that that role is now eligible for overtime. So does your organization have any idea of what that actually looks like? How many of those employees are routinely working over 40 hours in a work week? And that might be hard to identify or tough to back into, because you may not be tracking that time today. If not, you know, maybe you can collect some information about that, you know, anecdotally, through conversations with them, conversations with their leadership team, you may also consider whether or not those hours might shift during the busy periods of your organization. Like do you have, like we do, we're very busy at year end. There are other teams internally that are very busy at certain times of the year. Is there overtime then. You know, kind of being cognizant of that stuff and then if possible, like can you project some data about the potential costs to either update those salaries or to potentially pay for whatever overtime you think might occur as a result of a change. And then also, you know, the administrative change of that. Because if you are changing them, you are going to start having to track their time, they're gonna have to start tracking their time. So there's really an opportunity here to take a more holistic view at what that impact is gonna be for your

organization, both administratively and financial aid.

- I wanna highlight just a couple of things you said there to just provide a little bit of clarity. So you talked about, you know, maybe this is the time where you're gonna go back and move somebody out of that exempt status to non-exempt status. And just to clarify, you still need to do the evaluation. It isn't just you decide, "Hey, they're no longer going to be exempt, they're gonna be non-exempt now." So I just wanna highlight that out. And it is a great time to go into this detail and have a better understanding, whether you're gonna raise those thresholds to the July 1st, if you're gonna go ahead and push 'em forward to the January 1st, taking into account that there could be stop gaps that happen 'cause of legislation and people, you know, proposing that this doesn't go live. So there's definitely a lot to consider on this. I will make one note here that, you know, Corinne and I are going to be talking about this in more detail in an upcoming webinar at the end of this month. I'll make sure to include a link to that in the show notes if you wanna attend that webinar, where we'll go way deeper into this topic and provide some great tools and resources on how you conduct that audit, and make sure that you are approaching it in the best way possible for your organization and can render the data that you need to see. You know, as HR professionals, we should be coming to our business and saying, "Okay, if we make the increase based on the threshold to July 1st, this is the economic impact. If we skip one and go to that January 1st amount in July, here's the impact. And if we make these changes, here's the overtime impact, right?" There's a lot of data that we need to gather in HR. So I think it's really important that you shared that. And depending upon the business, this could be a really huge change, and a lot of change management strategies are gonna be needed to implement these things. Is there other considerations that you think that our listeners should really be attuned to as they embark on this?

- Yeah, you know, and I think you kind of alluded to this, but I think that the best advice I could give here is like, you should try to think about this holistically. So like once you're looking at that population of potentially impacted employees, like the other thing that you should be looking at is like whether or not an exempt status is appropriate for them more broadly. Like actually taking the time to look at that test and see if those individuals actually fit or not. So, you know, that I think paired with, you know, the data that I talked about, the data that you talked about, in terms of what is that potential financial impact, as well as thinking about your communication strategy, you know, because there are going to be... No matter how you change this, there are going to be people that, you know, it's gonna have an impact on your employees. They're going to feel a certain way about it, and I think particularly in the scenarios where you might be going from exempt to non-exempt and telling someone now, you know, "You are going to have to clock in and out. You're gonna have to be keeping track of your time." You, you know, may or

may not, based on your analysis, expect that that person is getting, you know, a compensation bump as a result of that. You know, so the messaging might be great if you do expect them to get some overtime for that. The messaging might be not so great if you don't expect them to earn any overtime, and now they also have to clock in and out. They're gonna... There's a potential for them to feel like it is a bit of a demotion. So the way that I would think about that in terms of messaging and saying like, you know, "There's this new compliance rule coming out. Like we took this opportunity to do this holistic review and really understand whether or not you were appropriately classified in the first place. And then based on that, you know, we came to this determination to make sure that, you know, we're providing you with the appropriate protections under FLSA based on your duties." So that is how I would advise our employers to think about it, is like a really thoughtful approach, a really data grounded approach, and then a very thoughtful approach to the messaging that then results from that.

- What advice or maybe tips or maybe you could alleviate some fear, I think about the group that's gonna conduct this audit and maybe they realize they've had people that are misclassified either way. Does the DOL, for lack of better description, come after those people once they've identified that somebody might have been classified wrong? Or is it in good faith that you're doing due diligence now and you're correcting the error?

- I mean, I think there's always like the outside chance, potentially if there's someone in your organization that files a complaint or something like that. But I think that is the least likely outcome in this situation. In this situation, like there is a new rule, there is a new threshold, and the new threshold is a lot higher than it used to be. So, you know, taking some time to be thoughtful about your workforce and doing, like you said, your due diligence and coming to it in good faith to try to make the appropriate changes for your organization. Like generally speaking, a regulator is going to look on that with more favorability than if you did nothing. So, you know... But, you know, that said, I think that this is, if you find yourself in a situation where you feel uncomfortable with making a decision about this information, or if you feel like your organization is not well positioned to move forward, whatever moving forward might look like based on that analysis, it's always a good opportunity to, you know, potentially have a conversation with your legal team or with your outside counsel to kind of think about like, is there anything else I need to be thinking about here or doing here, if I am in a situation that I feel like I need to like rectify something more broadly than what I'm trying to accomplish to come into compliance with these new requirements.

- Corinne, as always, this was such a great discussion and hopefully our listeners will jump on and join us at the end of the month for

that webinar as well.

- Yeah, looking forward to it. Thanks for having me.

- I hope you enjoyed today's episode. You can find show notes and links at the [hrmixtape.com](http://hrmixtape.com). Come back often, and please subscribe, rate and review.