

# FLSA Update

S.C. Association of Counties Human Resources Association

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**BETTIS LAW GROUP, LLP**  
*South Carolina's Labor & Employment Law Firm*

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# FLSA Salary Threshold Changes

- Two tests for salaried, exempt workers
  - Salary test
  - Duties test
- Old Salary test
  - Guaranteed salary
  - \$684/week (\$35,568/year)
- Proposed Change
  - Guaranteed salary
  - \$1059/week (\$55,068/year)
  - Adjusted for inflation every 3 years



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# FLSA Salary Threshold Changes

- Final Rule
  - July 1, 2024
    - \$844/week (\$43,888/year)
    - HCE test: \$132,694/year
  - January 1, 2025
    - \$1128/week (\$58,656/year)
    - HCE test: \$151,164



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# FLSA Salary Threshold Changes

- Compliance

- Increase salary?
- Convert to hourly?
  - How will you determine regular hourly rate?
  - Budget for overtime
  - How will you track time?
  - Workplace morale issues ("I don't want to punch a clock...")
- Begin tracking time now?
- Do employees below new thresholds meet the duties test?



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# FLSA Salary Threshold Changes

- Legal Challenges?
  - Texas
    - Injunction issued in favor of State of Texas as employer
    - Doesn't apply to other states or private employers
    - In another lawsuit, nationwide injunction was sought
    - Denied pending ruling on summary judgment – possibly a ruling before 1/1/2025
  - Fifth Circuit Court of Appeals
    - Appeal of challenge to authority of DOL to increase threshold in 2019
    - Keep watch: trial court rejection of lawsuit was based on *Chevron*, recently overturned by Supreme Court
  - These cases generally challenge DOL's ability to set any salary threshold because they aren't a part of the statute.
  - Don't count on legal challenges.



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# FLSA Independent Contractor Rules

- Focuses on “economic dependence” of worker on employer
- Factors (not exclusive and none more important than another)
  - Opportunity for profit/loss depends on managerial skill
  - Investments by worker vs. by employer (capital/entrepreneurial investment in business vs. cost of tools and supplies)
  - Degree of permanence of the relationship (indefinite, continuous, exclusive vs. project based, time-limited, sporadic)
  - Nature and degree of control (setting work hours, directly supervising work performance vs. retaining control over finished product/project)
  - Work integral to employer’s business (making the product/providing the service vs. tangential work)
  - Skill and initiative (brings particular skill to the job vs. dependence on training by employer)



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# FLSA Independent Contractor Rules

- Legal Challenges?
  - Georgia, Tennessee, Alabama
  - None have resulted in an injunction
- Upshot
  - Review “contractor” arrangements
  - No “1099 employees”
  - Cannot classify as a contractor to avoid PEBA Retirement earnings limits



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# Questions?

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