



OREGON
BUSINESS
& INDUSTRY

OBI

In View: Employment

Annual Salary Threshold for FLSA Exemptions Increases Jan. 1

By Heidi Mason, Innova Legal Advisors

Last month, the U.S. Department of Labor (DOL) published a final rule increasing the salary level required to qualify for the executive, administrative, and professional exemptions from the Fair Labor Standards Act (FLSA). The current minimum salary required to claim these exemptions is \$455 per week. Beginning Jan. 1, 2020, that amount will rise to \$684 per week, equivalent to \$35,568 annually.

The minimum salary to qualify for the highly compensated employee exemption is also increasing, albeit to a lesser degree. The current annual salary threshold is \$100,000. That will increase to \$107,432 at the beginning of the new year.

Under the new rule, DOL will permit employers to use nondiscretionary bonuses and incentive payments to satisfy up to 10% of the updated salary level thresholds. However, those payments must be made on an annual or more frequent basis. “Catch-up” payments are also allowable within the first pay period following the end of the year.

Examples of positions likely to be impacted by this change include, but are not limited to, supervisors, managers, administrative assistants, purchasing agents, insurance claims adjusters, engineers, registered nurses, and accountants. According to DOL estimates, raising the minimum salary threshold to \$684 per week will result in 1.3 million U.S. workers becoming eligible for overtime pay.

The new salary thresholds are widely viewed as a compromise from a similar rule the DOL promulgated two years ago under the Obama administration. That version would have raised the minimum salary for the executive, administrative, and professional exemptions to \$913 per week, equivalent to \$47,476 annually. Successful legal challenges prevented that rule from going into effect. It was enjoined and subsequently invalidated by a U.S. District Court in Texas because nearly doubling the prior minimum salary level would have effectively eliminated consideration of an employee’s bona fide executive, administrative or professional capacity duties.

Under the current rule, there is no change to the duties tests that apply to the executive, administrative and professional exemptions. Employers who have not recently evaluated their exempt employees’ duties would be wise to do so now.

Helpful guidance from the DOL in achieving and maintaining FLSA compliance is available. For additional information, please see:

- [Fact Sheet: File Rule to Update the Regulations Defining and Delimiting the Exemptions for Executive, Administrative, and Professional Employees](#)
- [Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer &](#)

[Outside Sales Employees Under the Fair Labor Standards Act \(FLSA\)](#)

- [Frequently Asked Questions](#)
- [Small Entity Compliance Guide](#)

For detailed questions, be sure to contact competent employment counsel.

This article is provided for educational purposes only, does not constitute legal advice and does not create an attorney-client relationship.

Heidi Mason is contributing this column for the newsletter as part of Innova Legal Advisors partnership with OBI through the [LegalPlus Program](#). If you or your company would like to contribute content to OBI newsletters, please let us know by emailing communications@oregonbusinessindustry.com.



Regulatory Updates

Independent Contractor Workgroup

OBI is participating in a workgroup examining the potential rules and laws affecting independent contractors in Oregon. In the new gig economy (think Uber and Lyft drivers or DoorDash and Grubhub delivery), the role of independent contractors is a complex issue being addressed in legislatures and courts nationwide.

Last year Oregon legislators considered but did not pass a broad proposal that would have eliminated most independent contractor relationships with minimal exceptions. It was similar to a law passed in California ([AB 5](#)) and a court case ([Dynamex](#)) which set requirements for an independent contractor, often referred to as the [ABCs](#). An individual is an independent contractor if the business could prove the worker is:

- A. Free from the company's control;
- B. Doing work that isn't in the normal course of the company's business;
- C. An independent business in the industry.

OBI remains focused and engaged on discussions and will update members as the workgroup continues its tasks.

Prevailing Wage

Legislators are once again considering proposals that would require private companies participate in the public construction system by forcing them to pay prevailing wages in enterprise zones. A workgroup has been meeting for the last month, led by Sen. Kathleen Taylor, D-Milwaukie. OBI is a part of this workgroup.

This effort stems from the 2019 session, when [HB 2408](#) would have required private construction projects in enterprise zones to pay prevailing wage, which is traditionally reserved for public projects or publicly funded projects. HB 2408 would have virtually destroyed the enterprise zone program, affecting local governments' ability to attract new businesses, OBI and our partners said in objections to the legislation. The bill passed the House but we were successful at defeating it in the Senate.

The latest effort requires prevailing wages for all data center and renewable energy projects in enterprise zones, long-term rural enterprise zones and strategic investment program areas. This proposal could devastate rural Oregon and efforts to attract businesses. OBI will continue to update our members on the workgroup's progress.

BOLI Rulemaking

The Bureau of Labor and Industries is conducting a marathon day of rulemaking hearings. On Oct. 17, BOLI is holding public hearings for six modifications, additions or deletions of rule language. These rules are non-controversial and primarily focus on implementing statutory language. More robust rulemakings will occur after the February 2020 legislative session.

All hearings on Oct. 17 are at the Portland BOLI office: 800 NE Oregon St., Suite 1045. For those interested, the schedule is as follows:

- 9 a.m. – [Wage Security Fund Increase](#)
 - 10 a.m. – [Increase License Fee for Property Services Contractors](#)
 - 11 a.m. – [Language Clean-Up of Disability Accommodation Law](#)
 - Noon – [Pay Equity Technical Change](#)
 - 1 p.m. – [Breaks for Expression of Milk](#)
 - 2 p.m. – [Pregnancy Accommodation](#)
-

Ballot Initiatives

OBI is keeping an eye on these two initiative petitions:

IP 28, the [Public Assistance Protection Act III](#), aims to charge employers to create a “Public Assistance Protection Fund.” The assessment would fall to retail, food service, hospitality, distribution and call center businesses with more than 100 employees. Each employer would pay a fee based on its number of employees, median wage and the cost of assistance for an employee earning that wage. OBI submitted [comments](#) last week detailing the ways the initiative fails to properly inform voters of how it could change current laws.

IP 41, the [Grocery Store Service and Community Protection Act](#) aims to limit automated checkout stands in retail stores. It specifically mandates no more than two operating at any one time per location. OBI submitted [comments](#) last week arguing the initiative as proposed is too vague for voters to understand the effects of such a law. While its wording refers to “grocery stores,” the term’s definition in the proposal would rope in pharmacies and home improvement stores, which the average voter would not necessarily think of as a grocery store. The wording is also vague on enforcement, specifically defining who could lodge complaints or lawsuits against retailers who fail to comply.

September Employment Update

The September employment report showed job growth cooling in Oregon. Jobs grew by only 200 in September, a slowdown to average 100 per month over the last five months. That compares to a 3,000-jobs-per-month average for all of 2018. The Oregon Employment Department’s report showed some industries expanding while others contracted.

Employment in Oregon: September 2019

From the Oregon Employment Department



Employment rose by **200 jobs** in Sept. 2019

Gains:

- **+2,300** - healthcare and social assistance
- **+1,000** - wholesale trade
- **+400** - manufacturing

Losses:

- **-2,100** - government
- **-500** - financial activities
- **-500** - professional and business services
- **-400** - retail trade

Two industries grew consistently over the past **12 months**:

- Healthcare and social assistance
+ 9,000 jobs
+ 3.5%
- Manufacturing
+ 6,100 jobs
+ 3.1%

To read the full report, [click here](#).

2019 Statesman Dinner

The 2019 Statesman Dinner was a huge success! Thank you to all the members and guests who attended. And thank you to our [sponsors](#) for helping OBI make this event happen. OBI honored Gov. Ted Kulongoski and businessman Gerry Frank as Statesmen of the Year and heard a keynote address from Alaska Sen. Lisa Murkowski. For more details on the evening's events, read the full press release by [clicking here](#). [Click here](#) to see more pictures from the night and [click here](#) to watch tribute videos from the event.



Upcoming Events

2020 OBI Annual Meeting – Save the Date!

Mark your calendars for Thursday, Feb. 13, for the OBI Annual Meeting and Lobby Day in Salem.



In the News

[Oregon Labor Unions Vow Retribution Against Some Democrats](#)

[Oregon's Jobless Rate Holds Steady, Despite Hiring Slowdown](#)

[After Boycott, Workers at Oregon and Washington Grocery Stores Ratify Labor Contract with Management](#)

[Career Summit Rounds Up Regional Workers](#)

[Be Proactive to Avoid Workplace Gripes](#)



Resources

Wholesale Fuel Pricing

OBI has partnered with MCP Petroleum to drive down OBI members' fuel cost. OBI is leveraging the collective purchasing power of our membership to get wholesale fuel pricing for our members. In addition to fuel savings, OBI members will have access to a comprehensive fuel management system that will reduce slippage, save valuable employee time and provide accountability and oversight of your company's fuel consumption.

OBI members who use 900 gallons of fuel annually through their company are eligible for this program. Please contact [Jeff DeSantis](#) for more information.



PETROLEUM



**Smart Oregon Businesses
Choose OBI CompSAFE**

LEARN
MORE →

LegalPlus Program



Did you know, by being an OBI member you can get free legal advice? OBI and Innova Legal Advisors provides members 15 minutes of legal consultation each month through the LegalPlus program. Check it out by [clicking here](#). Or contact Bob Blackmore at Innova Legal Advisors: Phone: 503-479-7175; email: Bob.Blackmore@innovalegaladvisors.com.



OBI HealthChoice

Big Business Options on a Small Business Budget

LEARN
MORE →

Oregon Business & Industry
oregonbusinessindustry.com
1149 Court Street NE
Salem, OR 97301

