

THE EMPLOYER'S ADVISORY

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NEW MINIMUM WAGE AND SALARY THRESHOLD FOR COLORADO IN 2025

Is it just me, or does it seem like it was yesterday when the calendar turned to 2024? Okay, maybe not yesterday. But at least last week, right?

So, with 2025 on the horizon, the Colorado Department of Labor issued a new Statement of Basis, Purpose, Specific Statute Authority, and Findings. Notwithstanding that fancy title, this is the publication wherein the CDLE proposes a new minimum wage and a new salary threshold for exempt employees.

With respect to the new minimum wage, the CDLE identified that because the Denver-Aurora-Lakewood CPI came in at a 2.7% increase, the CDLE was proposing to establish the 2025 minimum wage at \$14.81 per hour, which is up from the current minimum wage of \$14.42.

Using that same CPI increase, the CDLE proposed that the minimum salary basis for exempt employees in 2025 should be \$56,485.00, which is up from the current amount of \$55,000.00. This proposed amount would be under the expected federal amount of \$58,656.00 for 2025 under the Fair Labor Standards Act.

So, if the CDLE's proposed amount is the amount used by Colorado, and assuming that the

federal salary threshold isn't overturned by a federal court before the end of the year, this would mean that Colorado employers would need to meet the federal amount (\$58,656.00), not the state amount (\$56,485.00), starting on January 1, 2025.

In short, if an employer pays the state amount, instead of the federal amount, an employer would not be able to establish that the employee is exempt from overtime because it would be under the relevant salary threshold.

AND SPEAKING OF THE FAIR LA- BOR STANDARDS ACT...

Earlier this summer, the United States Supreme Court agreed to hear the case of *E.M.D. Sales, Inc. v. Carrera*. This case involves the issue of what evidentiary standard courts should use when determining whether an employer has established that an employee meets one of the FLSA's duty-basis tests. As you know, for an employee to be exempt from receiving overtime, the employer must establish that the employer paid the employee at least the relevant salary amount (see above) and that the employee meets one of the FLSA's duty-basis tests (e.g., executive, administrative, professional, making wreaths principally out of evergreens, etc.)

Courts have traditionally held that when determining the duty-basis test courts should use the "preponderance of the evidence" test, which means, in essence, that the majority of the evidence supports

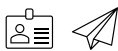
the decision. But in *Carrera*, the Fourth Circuit Court of Appeals determined that was too low of a standard and that organizations must establish that the employee met one of the FLSA's tests by the clear-and-convincing standard, which carries a greater burden than the preponderance of the evidence test.

If the Supreme Court chooses to follow the 4th Circuit, employers are going to have a much more difficult time establishing that employees meet the duty-basis test at issue. A decision on this matter is expected sometime in 2025.

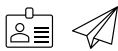
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