

DOL Releases New Proposed Overtime Threshold: Time to Review FLSA Classifications

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The Department of Labor (DOL) on March 7, 2019, [released a long-awaited proposal](#) to increase the minimum annual salary threshold to \$35,308 for employees to be exempt as executives, administrative, or professional employees. If the change is finalized, employees who are paid a salary of less than \$679 per week will be eligible for overtime pay for all hours worked beyond 40 in a workweek.

In addition, the proposal would raise the annual total compensation threshold for the highly compensated employee exemption to \$147,414 from the current \$100,000 and allows employers to use nondiscretionary bonuses and other types of incentive compensation, such as commissions, to satisfy up to 10 percent of that salary level. The regulations also include a commitment to review and update the salary threshold periodically through issuing proposed regulations and allowing public comment. The proposed regulations leave unchanged the duties required to make employees exempt.

These regulations are now subject to a 60-day comment period following publication in the *Federal Register*, which is expected next week. After the comment period closes, the DOL is likely to issue final regulations—a process that could take several months. The DOL has suggested it intends to publish a final rule before the 2020 presidential election cycle.

The minimum salary level remained stagnant at approximately \$24,000 from 2004 until 2015. In 2015, the Obama administration attempted to boost the threshold to \$47,000, but a federal judge in Texas stopped that change before December 1, 2016, when it was scheduled to take effect. After President Trump took office, the DOL renounced those changes and drafted its own proposed regulations with a lower salary threshold. Although the new threshold is lower than what the DOL passed under President Obama, there still are likely to be legal challenges from businesses and labor advocates alike when finalized.

This boost to the minimum salary threshold for overtime will increase the number of employees who are eligible for overtime pay. Employers will have to increase the salary of any employee who meets the duties test to at least the new salary level in order for that employee to retain his or her exempt

status. Alternatively, employers can pay overtime in accordance with applicable overtime laws.

The proposed changes to the overtime rules are a good reminder of the need for employers to ensure that their employees are properly classified and paid accordingly. Employees who satisfy the salary basis test are nonetheless non-exempt and entitled to overtime if they do not primarily perform exempt job duties. Additionally, many states have set higher minimum wage and overtime thresholds that employers must also follow. Employers must remain cognizant of all federal, state and local wage-and-hour laws.

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