

# DOL Proposes to Increase Salary Threshold Required for Most White-Collar Exemptions

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On August 30, 2023, the U.S. Department of Labor issued a [new proposed rule](#) that would change the required salary threshold for many salaried exempt employees. Under the proposal, the guaranteed salary that most employees must receive to qualify as exempt from the overtime rules will increase dramatically, to over \$55,000 annually.

Under the Fair Labor Standards Act, employees who work in executive, administrative, professional, and certain computer positions must generally meet both the salary basis test and the job duty requirements to be classified as exempt from the overtime rules. In addition to being paid on a salary basis (which means there can be no deductions from salary, subject to certain limited exceptions), the threshold salary is currently \$684 a week, amounting to \$35,568 annually. The proposed rule seeks to raise the threshold for salaried employees significantly to \$1,059 per week, or \$55,068 annually—an increase of approximately \$20,000 per year.

In addition, the new proposal would increase the total annual compensation threshold for exempt highly compensated employees from \$107,432 to \$143,988 annually—an increase of more than \$36,000 per year. With these changes, the Department of Labor also proposes to add an automatic updating mechanism to increase these salary thresholds every three years based on available earnings data. No changes are proposed to the duties tests necessary to qualify for one of these exemptions.

After the proposal is published, the public will have 60 days to comment on the proposed rule. If the proposal is accepted as currently written, it will mean significant changes for employers in compensation structure, as more employees nationwide will qualify for overtime pay unless their salaries are increased over the new threshold.

Employers should immediately review their workforces to determine what changes, if any, may be

necessary if the proposal is adopted as currently written. Possible considerations include:

- raising the salary of employees who meet the duties test to at least \$55,068 annually to retain their exempt status;
- converting employees to non-exempt status and paying the overtime premium of one-and-one half times the employees' regular pay rates for all overtime hours worked; or
- converting employees to non-exempt status and eliminating or reducing the amount of overtime hours worked by such employees.

Similar considerations should be undertaken with highly compensated employees. While it is wise to review pay practices proactively and identify potential changes that may become necessary, employers may wish to continue to monitor developments prior to actually implementing changes. As employers may recall from the most previous instance in which a major overhaul of the salary basis regulations was proposed, in 2016, significant changes can occur between the announcement of a proposed rule and the ultimate adoption of the final regulation.

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