

DOL Proposes Substantial Increase to Salary Threshold for FLSA's White Collar Exemptions

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On August 30, 2023, the U.S. Department of Labor (DOL) released a Notice of Proposed Rulemaking (NPRM) that would significantly raise the minimum weekly salary to qualify for one of the Fair Labor Standards Act's (FLSA) three white-collar exemptions. If the changes go into effect, they would have a significant impact on how employers pay their employees and who is or is not entitled to overtime pay.

Specifically, the DOL proposes raising the weekly salary by over 50 percent from \$684 per week to \$1,059 per week (which is the equivalent to an annual salary of \$55,068). The DOL also seeks to increase the annualized salary threshold for the exemption for "highly compensated employees" (HCE) from \$107,432 per year to \$143,988 per year. Finally, the DOL proposes automatically updating these earnings thresholds every three years.

Quick Hits

- The DOL seeks to increase the standard salary level for exempt white-collar executive, administrative, and professional employees from \$684 to \$1,059 per week.
- The DOL seeks to increase the total annual compensation requirements for the "highly compensated employee" exemption from \$107,432 to \$143,988 per year.
- Finally, the DOL seeks the implementation of a mechanism that would automatically update these earnings thresholds every three years.

Current Law

Unless specifically exempted by the FLSA, all employees must receive overtime pay for all hours worked in excess of forty in one workweek. Under current law, employees can be exempt from the FLSA's overtime requirements if they qualify for one of the three main white-collar overtime exemptions—executive, administrative, or professional (EAP). Employees qualify for an EAP exemption and do not need to be paid overtime compensation if they are (a) paid on a salary basis, earning a minimum weekly salary of \$684 (or \$35,568 per year), and (b) primarily perform certain EAP duties as defined by DOL regulations and courts. Current regulations also provide that HCEs

are exempt from overtime rules if they (a) earn at least \$107,432 per year and (2) regularly perform one or more of the exempt responsibilities identified in the EAP exemption.

The Proposed Rule

According to DOL [guidance](#) released in the form of a frequently asked questions (FAQs), the proposed rule seeks to accomplish four main goals:

1. Increase the minimum weekly salary level to qualify for an EAP exemption from \$684 per week to \$1,059 per week. The \$1,059 amount is equal to the “35th percentile of earnings of full-time salaried workers in the lowest-wage Census Region (currently the South).”
2. Increase the HCE exemption total annual compensation requirement to the “annualized weekly earnings of the 85th percentile of full-time salaried workers nationally (\$143,988 in 2022.)”
3. Implement automatic updates to the earnings thresholds every three years, utilizing up-to-date wage data to ensure continued alignment with prevailing economic conditions. The weekly standard salary level for the EAP exemption would be aligned to the 35th percentile of full-time salaried workers in the lowest-wage census region and the HCE total annual compensation requirement would be aligned to remain at the annualized weekly earnings of the 85th percentile of full-time salaried workers nationally.
4. Apply the standard salary level for EAP exemptions to Puerto Rico, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands.

The DOL stated in the FAQs that “[a]utomatically updating the salary level and HCE total annual compensation requirement using the most recent data will ensure that these tests continue to accurately reflect current economic conditions.” The FAQs further noted that the proposed rule includes a provision that would allow “the Department to temporarily delay a scheduled automatic update where unforeseen economic or other conditions warrant.”

Similar to the [2019 rule](#), which increased the salary and total annual compensation requirements for the EAP and HCE exemptions, the DOL is not proposing any changes to the duties tests, which outline the types of work an employee must perform in order to be classified as exempt.

Next Steps for Employers

The DOL encourages all interested parties, including employers, to submit written comments addressing the proposed rule. Commenters will have sixty days following the NPRM’s publication in the *Federal Register* to make their voices heard.

While we do not know the exact timeline for the DOL’s publication of a final rule or when a final rule might go into effect, the time between the 2019 proposed rule and the final rule was approximately ten months. If this rulemaking process follows a similar path, it is conceivable that a final rule will come into effect around July 1, 2024. It is also likely that any final rule will be challenged in the courts, mirroring the events following the Obama administration’s introduction of similar rules in 2016. Even without litigation, the DOL made clear that the salary threshold laid out in the NPRM, which is based on 2022 data, is likely to be as high as \$60,000 by the time a final rule is issued.

Employers wishing to proactively prepare for the potential implementation of the proposed rule may want to start strategizing on how they will treat their exempt employees who currently earn an annual salary between \$35,568 and approximately \$60,000. Options include converting those employees to

hourly, raising salaries, and paying overtime compensation above a fixed salary. Employers may also want to consider conducting a review of employee job duties to make sure employees are properly classified as exempt and prepare to account for automatic increases to the salary threshold.

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