

Proposed Rule Would Raise Salary Threshold to \$55,068 for Employee Overtime Exemptions

Article By:

S. Gordon Hill

Jeffrey J. Wilcox

Carmen M. Cato

The U.S. Department of Labor (DOL) has proposed a rule to raise the salary threshold for the white collar overtime exemptions from the current \$35,568 yearly minimum to \$55,068. This would mean that most employees making less than \$55,068 must receive overtime pay—time and a half their regular hourly rate—for any time worked more than 40 hours in one workweek. The proposed changes would also include automatic updates to the salary threshold every three years and raise the salary requirement for what is known as the “highly compensated individual exemption” from the current \$107,432 per year to \$143,988.

The DOL estimates that this would impact 3.6 million workers who are currently salaried. If the proposed changes take effect, employers will face the decision to either increase salaries for many exempt workers to the proposed minimum of \$55,068, or convert those exempt employees falling under the minimum salary to non-exempt hourly workers.

Once published in the Federal Register, the notice of proposed rulemaking will be open for public comment for at least 60 days. The DOL may make some adjustments as a result of public feedback, but employers should not expect major changes as this proposal is a significant component of President Biden’s economic policies.

No matter what the rule ultimately looks like, it will be challenged in the courts. However, it is uncertain whether these challenges will be successful. Therefore, businesses should consider taking steps now to prepare as if the proposal will take effect:

1. Review current exempt employees who earn between \$35,568 and \$55,068 per year. You can track employees' actual hours worked now to learn the potential impact of converting them to overtime pay.
2. Review current compliance. Although the proposed rule changes the salary threshold but not the other factors for an employee to be eligible for the “white collar” federal overtime exemptions, the rule may cause employees to scrutinize their exempt classification.

Employers should ensure that their exempt employees meet the three exception requirements: (1) paid on a salary basis; (2) paid at least the designated minimum salary; and (3) perform certain duties (which vary based on the exemption.)

3. Plan to give advance notice to employees and provide training to managers and those workers impacted. If converted to non-exempt status, employees will need to be trained in record keeping requirements, timekeeping procedures, overtime approval policies, and other specifics that may vary from business to business.

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