

DOL Proposes Salary Threshold Increase for Executive, Administrative and Professional Overtime Exemptions

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On August 30, 2023, the U.S. Department of Labor (“DOL”) announced its **Proposed Rule to increase the minimum salary** for the Executive, Administrative and Professional overtime exemptions from the current \$35,568 annual rate to at least \$55,068. The DOL added that, because the minimum is tied to the 35th percentile of weekly earnings of full-time salaried employees in the lowest-wage U.S. Census region, the figure could reach the \$60,000 range based on anticipated data later in the year. The Proposed Rule would **also increase the salary threshold for the Highly Compensated Employee exemption** from the current \$107,432 to at least \$143,988, based on the 85th percentile of salaried workers nationally. Moving forward, the Proposed Rule would automatically update minimum salary levels every three years based on earnings data. The DOL is **not proposing changes to the duties tests**, which employers also must meet, for these exemptions, but the thought is that many lower-salaried workers also may not perform the type of duties required to meet an exemption. The DOL estimates that its Proposed Rule would extend overtime pay requirements to 3.6 million workers.

As the name indicates, the Proposed Rule is not yet in effect. First, the DOL will undertake a 60-day public comment period, after which it would announce a future effective date for a Final Rule. There also will surely be legal challenges. Six years ago, a federal judge in Texas struck down the Obama DOL’s Final Rule that would have increased the salary threshold to \$47,476. The Trump DOL later increased the threshold to \$35,568, but that figure also is being challenged in court.

While the future remains uncertain, employers can begin to assess how the proposed increased salary threshold would impact their exempt positions and strategize as to what they could do to adjust to the change. The proposal also may prompt employers to audit their exempt positions more broadly, assessing whether jobs meet both the pay and duties tests for the exemptions claimed.

We Can Help

If you have questions about how this Proposed Rule may impact your organization, please contact [Brad Harvey](#) or any member of our [Labor & Employment Practice Group](#).