

# NOW & NEXT

## Labor & Employment Alert

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### The Department of Labor proposes significant increases to salary thresholds for exempt employees

By Michael J. Lingle and Christopher J. Stevens

Minimum salary threshold for exempt employees increases under proposed DOL rule.



#### What's the Impact

- / The Department seeks to increase the minimum salary threshold amount to at least \$1,059 per week, or \$55,068 on an annual basis.
- / The Department seeks to increase the total annual compensation requirement for the highly compensated employee exemption to \$143,988.
- / Employers with concerns about the Department's proposed changes are encouraged to submit comments on its proposed rule.

#### Summary

Through a proposed rule released August 30, 2023, the Department of Labor (the Department) intends to enact a substantial increase in the standard salary threshold employers must pay employees to satisfy the requirements for the "white-collar" overtime exemptions under the Fair Labor Standards Act (FLSA). See (the [Proposed Rule](#)). Currently, the minimum salary threshold for those exemptions is \$684 per week, or \$35,568 on an annual basis. The Department seeks to increase that amount to at least \$1,059 per week, or \$55,068 on an annual basis.

In addition, the Department seeks to increase the annual compensation requirement for the “highly compensated employee” (HCE) exemption to at least \$143,988 from \$107,432.

The Department has requested comments on its proposed rule, which will be due within 60 days following publication of the proposed rule in the *Federal Register*.

## Background

Exempt from the overtime requirements of the FLSA are employees who work in executive, administrative, and professional capacities, commonly referred to as the “white-collar” exemptions. To qualify for the exemptions, employees must meet a duties test and, in most cases, be paid a minimum standard salary for each workweek.

The Department most recently updated the salary threshold for the white-collar exemptions in 2019 when it set the amount at \$684 per week, or \$35,568 on an annual basis. At the same time, the Department set the HCE exemption’s annual compensation requirement at \$107,432.

## The Proposed Rule

In its current proposal, the Department’s stated goals include updating the standard salary level for the white-collar exemptions to account for earnings growth since 2019 and to establish a salary “that will work effectively with the standard duties test to better define who is employed in a bona fide” exempt capacity. See Proposed Rule at 48. The duties tests will remain unchanged.

After considering various salary levels, the Department settled on setting the salary level at the 35th percentile of the lowest-wage census region (currently the South), which it believes will “in combination with the standard duties test, effectively calibrate the scope of the exemption to ensure the exemption of bona fide” white-collar employees. See Proposed Rule at 65.

Notably, given that the salary level is tethered to wage data that changes over time, in the event the rule becomes final, the salary level in the final rule could very well increase should wages overall continue to increase.

Based on its proposed change to the salary level, the Department expects that 3.4 million workers will become eligible for overtime, as they will no longer qualify for a white-collar exemption.

In addition, the Department proposes to increase the total annual compensation requirement for the HCE exemption to \$143,988, which equals the 85th percentile of the annualized weekly earnings for full-time salaried workers nationwide. That is an increase in the total compensation requirement from \$107,432 previously set in 2019. Again, if adopted, the final rule may include a greater amount depending on the benchmark wage rate at that time.

The Department also seeks to increase the standard salary level for computer professionals, in certain US territories and the motion picture industry.

Finally, the Department's proposed rule includes a new regulatory provision (to be codified at 29 C.F.R. § 541.607) providing for automatic updates to the standard salary levels for the white-collar exemptions as well as the total compensation requirement for the HCE exemption. If adopted, the new provision would automatically result in updates to the standard salary levels for the white-collar exemptions and the total compensation requirement for the HCE exemption every three years, with 150 days' notice of the updated amounts.

## What's Next?

After publication in the *Federal Register*, the Department will accept public comments for a period of 60 days. Employers with concerns about the Department's proposed changes are encouraged to submit comments. Thereafter, we expect that the Department will issue a final rule. Equally likely is that any final rule issued by the Department will be challenged in court and exposed to judicial scrutiny. Back in 2016, a similar effort by the Department was judicially blocked after being challenged in court.

We will monitor and provide updates as the Department's proposed rule moves through the rulemaking process.

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