

DOL Proposes Significantly Raising Minimum Salary for White-Collar Overtime Exemptions

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On August 30, 2023, the U.S. Department of Labor (Department or DOL) issued a Notice of Proposed Rulemaking that would raise the minimum salary floor required to qualify for the overtime exemptions for executive, administrative, and professional (EAP) workers under the Fair Labor Standards Act (FLSA) by over 50 percent. The proposal would increase the threshold for these exemptions to \$1,059 per week (\$55,068 per year) from the current \$684 per week (\$35,568 per year).

The proposed rule was published in the Federal Register on September 8, 2023, and is subject to a 60-day comment period that expires November 7, 2023.

The DOL has released guidance in the form of frequently asked questions about the proposed rule. According to the FAQs, if these changes go into effect, 3.4 million additional salaried employees could be entitled to overtime pay.

Currently, EAP employees are exempt from overtime and are not required to be paid time-and-a-half for hours worked over 40 in a workweek if they (1) are compensated on a salary basis at a rate not less than \$684 per week (proposed to be \$1,059); and (2) primarily perform specific duties (types of work) that are considered exempt. The proposed rule addresses only the salary basis test for these exemptions and does not change the duties test.

By way of background, in 2016 the DOL attempted to substantially raise the salary threshold for white-collar exemptions for the first time since 2004, essentially doubling it. That effort was blocked in court. But in 2020, the Department succeeded in increasing the amount more modestly to the current level.

The DOL's new proposal also seeks to raise the total compensation requirement for exempt "highly compensated employees" (HCEs) by almost 35 percent, from \$107,432 to \$143,988 per year. HCEs are exempt from overtime if they meet the salary minimum and perform one or more exempt responsibilities.

The Department is also proposing to automatically update these salary thresholds every three years. The DOL has indicated that the actual salary threshold will be based on earnings data as of the date the final rule takes effect, meaning that the new salary amounts may be even higher if these changes survive a court challenge.

Employers will want to track developments affecting this proposed rule and consider developing a plan for transitioning any currently exempt employees who do not meet the new salary minimums (or who do not meet the duties tests) to non-exempt status.

If you have questions about this or any related matters, please contact Maynard Nexsen's Employment & Labor Law practice group.