

## Check the DOL's Overtime Rule for a Pulse

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By now, you've likely heard that the U.S. Department of Labor's overtime rule - which would have doubled the salary threshold to qualify for the Fair Labor Standards Act's white collar exemptions -- was struck down by a Texas federal court at the end of August.

According to the court, the DOL overstepped its authority by setting the new minimum salary level so high -- \$913 per week from \$455 -- that for the additional 4.2 million people who would be covered by the overtime rule, the duties test was rendered meaningless. Congress's intent in passing the overtime law was clear and unambiguous: the overtime exemption applies to employees who perform "bona fide executive, administrative or professional capacity" duties.

What about the appeal of the DOL's overtime rule pending in the Texas federal appellate court? [As we predicted](#), the DOL asked to drop the appeal, and the appeals court agreed to dismiss the case. As a result, the Obama-era DOL overtime rule is dead, finalizing a return to the status quo salary threshold of \$455 per week, or \$23,660 per year.

For now.

But can the DOL set a salary level at all? The court was careful not to say the DOL had no authority to set a salary threshold, only that the level of \$47,476 went beyond its authority.

In anticipation of this ruling, in July, the DOL issued a request for information seeking public feedback on ways to revise the Obama administration's overtime rule. **Employers have until September 25 to submit comments and recommendations on issues raised by the rule.**

Among them:

Would updating the salary threshold to keep pace with inflation be the appropriate measure?

Should multiple salary levels be set to account for employer size and geographical regions?

Should different salary levels be considered for each of the executive, administrative, and professional exemptions?

Would it be preferable to base the exemption entirely on the duties test without regard to the salary paid by an employer?

Should non-discretionary bonuses and incentive payments be counted towards an employee's salary?

How should the highly compensated employee salary level be set?

Should the salary thresholds be automatically updated on a periodic basis?

Comments may be submitted by mail to:

Melissa Smith

Director of the Division of Regulations, Legislation and Interpretation, Wage and Hour Division, U.S. Department of Labor

Room S-3502, 200 Constitution Avenue NW  
Washington, DC 20210

Or submit electronically.

Anyone with questions on this or other employment issues can contact me or any of the attorneys in Barley Snyder's Employment Law Practice Group.

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