

DOL Releases Much-Anticipated Proposed Update to Overtime Regulations

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More than a million more American employees would be eligible for overtime if proposed updates from the U.S. Department of Labor go into effect.

The closely followed updates propose to increase the salary threshold for overtime for exempt white collar workers - executive, administrative and professional employees - to **\$35,308 per year (\$679 per week)**. That's a 50 percent bump from the current \$23,660 (\$455 per week). However, the department did not include changes to the duties tests - the second part of the exemption test - for these same categories of employees.

"Our economy has more job openings than job seekers and more Americans are joining the labor force," according to DOL Secretary Alexander Acosta. "At my confirmation hearings, I committed to an update of the 2004 overtime threshold, and today's proposal would bring common sense, consistency, and higher wages to working Americans," he said.

Some additional changes in the proposed updates include:

- An increase in the highly compensated employee (HCE) salary threshold from \$100,000 to \$147,414 per year to qualify for this overtime exemption. However, note that Pennsylvania does not recognize this specific exemption under its overtime regulations, meaning that employees must meet the salary and duties test for one of the other exempt category of employees to be overtime exempt.
- Allowing employees to use non-discretionary bonuses and incentive payments - including commissions that are paid annually or more frequently - to satisfy up to 10 percent of the salary threshold of \$35,308.
- The salary threshold would not be automatically adjusted. Instead, the department will periodically review the salary threshold and update it only after a notice and comment period.

No changes are proposed to overtime protections for:

- Police officers
- Fire fighters
- Paramedics
- Nurses
- Laborers, including non-management production line employees, and non-management employees in maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, and other construction workers.

The department anticipates that a final rule will become effective in 2020.

What should employers do now?

First, the DOL encourages public comment on the proposed rule, particularly whether the proposed 10 percent cap on using non-discretionary bonuses and incentive payments towards the salary threshold is sufficient, and how to approach periodic review of the salary threshold in the future. Comments may be submitted electronically at www.regulations.gov in the rulemaking docket RIN 1235-AA20 within 60 days.

Second, it's time to [dust off those plans from 2016](#). Although the increase in the salary threshold to \$35,308 will not have the extensive impact that the prior proposed increase would have, employers may still have managers and administrative employees who fall below that threshold. For those employers, consider the following:

- Have exempt employees who currently fall below \$35,308/year keep a record of their hours worked including off-hours time on electronic devices and upgrade time keeping systems.
- Review job descriptions and exempt vs. non-exempt duties.
- Analyze the impact of bumping pay levels for exempt employees to match the salary threshold, hiring more employees to spread out what would otherwise be overtime hours for newly non-exempt employees, and/or reassigning job duties to funnel exempt tasks up the ranks to exempt employees.

For additional assistance, you may join us on May 10 for [Barley Snyder's 36th Annual Employment Law Seminar](#), where we will cover the proposed overtime regulations in the "All Things Wage and Hour" session.

If you have immediate questions on the proposed overtime regulation overhaul, please [reach out to me](#) or anyone in our [Employment Practice Group](#).

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