

## Pennsylvania Tries Again With Updated Overtime Final Rule

PUBLISHED ON

**October 18, 2019**

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On the heels of September's [final federal decision on increased overtime salary thresholds](#), Pennsylvania updated its own proposal Thursday that once again will be more generous than the federal rule in determining what employees are entitled to overtime pay.

The maximum salary thresholds in Pennsylvania's most recent proposal are slightly less than its [previous proposal](#) from 2018, which the Commonwealth's Independent Regulatory Review Commission criticized for lacking justification to support a move to such a high salary threshold.

After the commission's criticism, the Pennsylvania Department of Labor & Industry went back to work crafting a new proposal, following a summer listening tour that traversed the Commonwealth to get input from business leaders.

In Pennsylvania's latest proposal, the salary threshold that employees in executive, administrative and professional occupations must meet to be entitled to overtime would begin at the new federal salary threshold - \$684 per week (\$35,568 annually) - in the first year, then increase to \$875 per week (\$45,500 annually) by 2022. Employees whose salary is less than that amount are entitled to overtime pay. Every three years after 2022, the threshold will be updated automatically.

The state's proposed pay threshold would be phased in with incremental hikes to the 2022 rate, as follows:

Pennsylvania's new maximum salary threshold of \$875 per week is about 5 percent less than the previous Wolf administration proposal of \$921 per week, or \$47,892 annually.

The federal final rule released in September sets the salary threshold at \$35,568, with nationwide implementation starting Jan. 1, 2020. Similar to the federal rule, Pennsylvania's final rule would allow up to 10% of the salary threshold to be satisfied by nondiscretionary bonuses, incentives and commissions that are paid at least annually. However, the federal salary threshold would not be automatically adjusted. Instead, the U.S. Department of Labor will periodically review the salary threshold and update it only after a notice and comment period.

"The Wolf Administration does not believe the new U.S. (Department of Labor) rule truly reflects what Pennsylvanians are being paid," the state's [Thursday news release announcing the new proposal](#) noted. The federal Fair Labor Standards Act expressly allows states to devise their own salary thresholds that go beyond and are more protective than the federal rule.

Business associations across the state are critical of the Pennsylvania's latest attempt to modernize its overtime eligibility rules. Pennsylvania Chamber of Business and Industry President and CEO Gene Barr decried the "unintended, but profoundly harmful, impact of this proposal" and said nonprofits especially could suffer since they can't raise prices to account for higher pay rates. That leaves them the option of either cutting services or cutting staff.

"Unfortunately, these concerns were largely disregarded in the Department's latest version of the rule," [Barr said in a statement](#). "We urge the Independent Regulatory Review Commission and lawmakers to consider the true impact of this proposal and reject it."

When the federal final rule came out in September, we advised employers to take these steps to be ready for the new salary threshold:

- Have exempt employees whose salaries currently fall between \$23,660 and \$35,568 per year keep a record of their hours worked including off-hours time on electronic devices; upgrade time keeping systems where needed.
- 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.

While Pennsylvania's rule needs final approval from the Independent Regulatory Review Commission before it takes effect, this advice still applies, particularly as Pennsylvania looks to phase in even higher thresholds over the next three years and beyond.

If you have any questions about either the FLSA or Pennsylvania's final rule on overtime salary thresholds and how it can affect your business, please [contact me](#) or anyone in the [Barley Snyder Employment Group](#).

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