

DOL Releases Proposed White-Collar Exemption Rule, Sets Minimum Salary at \$55,068

By Justin R. Barnes & Jeffrey W. Brecher

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Meet the Authors



Justin R. Barnes

(He/Him)

Office Managing Principal

(404) 586-1809

Justin.Barnes@jacksonlewis.com



Jeffrey W. Brecher

(Jeff)

Principal and Office Litigation
Manager

(631) 247-4652

Jeffrey.Brecher@jacksonlewis.com

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The U.S. Department of Labor (DOL) has issued a new [proposed rule](#) to increase the minimum salary requirements for the “white collar” exemptions (executive, administrative, and professional) from minimum wage and overtime pay requirements under the Fair Labor Standards Act (FLSA).

Under the proposed rule, the salary level for the white-collar exemptions to apply will increase from the current \$684 per week (\$35,568 per year) to \$1,059 per week (\$55,068 per year). That would be a 55% increase from the current level that became effective in January 2020 during the Trump Administration. The annual compensation level for highly compensated employees also will increase, by 34%, from the current \$107,432 per year to \$143,988 per year. However, the DOL has indicated the actual salary threshold will be based on earnings data as of the date the final rule takes effect — which means that the salary floor may be even higher than the projected \$55,068. That could lift the operative threshold to more than \$60,000 annually.

The DOL also proposes automatic updates to these salary thresholds every three years to reflect current earnings data (but it would be able to temporarily delay a scheduled automatic update if warranted by unforeseen economic or other conditions).

In setting the new proposed salary level, the DOL used the 35th percentile of earnings of full-time salaried workers in the lowest-wage Census Region (currently, the South). The increase to the highly compensated threshold was set to the 85th percentile of full-time salaried workers nationally. When it increased the salary level in 2004, the DOL used the salary level for the 20th percentile for full-time salaried workers in the lowest census region and in the retail industry nationwide.

The new salary levels also will apply to workers in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands. Increases to the salary threshold have not been extended to U.S. territories since 2004.

The current proposed rule does not make any changes to the duties test or salary basis requirement, the two other prongs required under the regulation for the white-collar exemption to apply. According to the DOL, the current duties test “is well known to employers, employees, and the courts, making it easier and more efficient for employers to implement and for workers to understand.” The DOL anticipates that even with its proposed change to the salary threshold, the duties test will continue to be the determining factor in determining exempt status for almost three-quarters of salaried white-collar employees.

Impact, Prospects for Taking Effect

The long-anticipated overtime proposed rule was announced on August 30, 2023. The DOL originally indicated it would issue a proposed rule in the fall of 2021, but the

rulemaking was pushed back several times. According to the agency, the new rule will ensure that “fewer lower-paid white-collar employees who perform significant amounts of nonexempt work are included in the exemption.” The DOL estimates that 3.4 million currently exempt employees who earn at least the \$684 per week but less than the proposed standard salary level of \$1,059 per week would be entitled to overtime pay. In addition, the proposed increase to the highly compensated salary floor would affect 248,900 employees who are currently exempt.

Prospects for an eventual final rule taking effect are uncertain, however. Under the Obama Administration, the DOL issued a proposed rule setting the salary level at \$913 per week (\$47,476 per year), but that rulemaking was blocked by a permanent injunction prior to its effective date and was formally rescinded. The DOL almost certainly will face legal challenges to its latest rulemaking, including questions about the agency’s authority to impose the salary threshold increase, as well as its authority to implement, for the first time, automatic updates to those thresholds. (A lawsuit pending in a Texas federal district court challenges the 2019 rulemaking and argues that the federal agency lacks statutory authority to impose *any* salary level because the statutory text of the FLSA does not include a salary threshold.) The latest rulemaking likely will be challenged under the recently reinvigorated “major questions” doctrine. (For more on this landmark U.S. Supreme Court decision on administrative agency authority, see [U.S. Supreme Court’s Decision Curtailing Regulators May Raise ‘Major Questions’ for Employers.](#))

The DOL has submitted the proposed overtime rule for publication in the Federal Register; however, it has not yet been slated for publication. Once published, employers and other stakeholders will have 60 days to submit comments to the DOL. (The agency received more than 300,000 comments after it issued its 2019 overtime proposed rule.) The DOL must review and address all substantive public comments received, then it will publish a final rule, likely with the current proposed version substantively intact. It is possible the final rule will be released in the autumn, with an effective date of January 1, 2024 (barring an injunction staying the rule pending expected legal challenges).

What Should Employers Do?

Employers that currently have exempt workers who earn more than \$684 per week, but less than \$1,059 per week, yet satisfy the duties requirements, can comply with the proposed rule by increasing the employee’s salary to the proposed level or reclassifying employees as non-exempt. Regardless of what the final rule may include, such rule changes are a good time for employers to review the exempt classification of their employees.

Employers also must consider how the proposed rule interacts with the corresponding exemptions under the myriad of state laws. Some states do not have overtime laws; others incorporate the FLSA as it stands; others incorporate the FLSA’s overtime provisions with higher salary requirements; and others have their own exemptions and salary levels without reference to the FLSA.

Jackson Lewis attorneys will continue to monitor developments concerning the proposed overtime rule. In the meantime, if you have any questions about the forthcoming rule or other wage and hour questions, please contact the Jackson Lewis attorney(s) with whom you regularly work.

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