



# Department of Labor Proposes Expansion of Overtime Eligibility

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The U. S. Department of Labor has proposed a significant expansion in the number of employees who are eligible for overtime pay by more than doubling the minimum salary requirement needed to qualify as an exempt employee. The Department of Labor (DOL) estimates that this change would make nearly 5 million employees eligible for overtime pay who are now classified as "exempt."

To be classified as "exempt" (that is, not entitled to overtime pay), most employees must (1) be paid a salary (not by the hour) at a rate which exceeds a specific weekly threshold and (2) perform certain duties which are outlined in existing regulations. The current salary threshold is \$455 per week, which translates to \$23,660 per year. This salary level has remained the same since 2004.

The proposed new regulation, released on June 30, would raise the minimum salary level to a projected \$970 per week, which translates to \$50,440 per year. (This salary level is only a projection because, technically, the regulation would set the minimum as "the 40th percentile of earnings for full-time salaried workers" as determined from government data. Based on current data, the Department of Labor projects that this figure will be \$50,440 in 2016.)

Raising the salary threshold means that most currently-exempt employees who make less than \$970 per week (\$50,440 per year) will become eligible for overtime pay in any week where the employee works more than 40 hours. Employees who are paid more than the threshold will still need to satisfy the "duties" requirements to be considered exempt.

The impact of this proposed change will vary based on the nature of the employer's workforce and business. Retail, hospitality and food-service businesses are expected to be most directly affected, but every employer who currently has an "exempt" employee that is paid less than the new threshold will have to consider how to manage this potential additional cost. At a minimum, employers will need to be certain that the hours worked by the newly-eligible employees are accurately tracked so that the employer will know when overtime pay is due.

In addition to raising the minimum salary threshold, the salary level for qualifying as a "highly compensated employee" (for purposes of overtime analysis) would also be raised. The "duties" portion of the test for a



highly compensated employee is less stringent, making it much easier for such an employee to qualify as exempt. The proposal would raise this threshold from its current annual level of \$100,000 to a projected level of \$122,148. The regulation also includes an escalator provision so that the two salary thresholds would fluctuate from year to year. The proposal does not change the "duties" component of the exemption test, but the DOL does invite input from the public as to whether changes to that portion of the test are also needed.

There is a 60 day public comment period, after which time the Department of Labor will publish its Final Rule. Instructions for filing a comment are included in the DOL's proposal. The explanatory material accompanying the proposed regulation discusses the projected salary levels in 2016, so it seems likely that a Final Rule is expected to become effective sometime in 2016. However, because of the dramatic potential increase in overtime eligibility, it is not too soon for employers to begin planning for these changes.

If you have questions, please contact your Lathrop Gage attorney or the attorney listed above.