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U.S. Department of Labor Releases Proposed Overtime Rule Proposed Rule Would Revise Overtime Salary Thresholds

On March 7, 2019, the U.S. Department of Labor (DOL) released a [Notice of Proposed Rulemaking](#) (“NPRM”) proposing to revise the overtime salary thresholds under the Fair Labor Standards Act (FLSA). The proposed rule would increase the weekly salary threshold for exempt employees from \$455 (\$23,660 annually) to \$679 (\$35,308 annually).

The DOL made earlier efforts to revise the overtime salary threshold, which stalled due to heavy legal opposition. This NPRM is a new effort by the DOL to address the current salary threshold that dates back to 2004.



Determining Exempt Status

In order to be exempt from FLSA overtime requirements, an employee must meet both the “salary test” and “duties test.”

Salary Test

An employee must meet two prongs of the salary test:

1. *The salary basis test* – With limited exception, the employee be paid a predetermined amount, regardless of quality or quantity of work, and the amount must at least equal the required minimum wage.
2. *The salary level test* – The minimum salary for an employee to qualify as exempt would be \$679 per week or \$35,308 annually. This is the primary focus of the NPRM.

Duties Test

The duties test exempts those that primarily perform executive, professional and administrative duties. For additional information on the duties test, please refer to the [DOL wage and Hour Division \(WHD\) Fact Sheet #17A](#).

Overtime Eligibility

Non-exempt employees, as defined under FLSA, must be compensated at 1 ½ times their normal rate of pay for any hours worked over 40 hours in a work week. Pay for time not worked such as vacation, sick leave, or holiday pay is not counted toward the overtime requirement. Non-exempt employees can be paid on an hourly, salary, piece rate, or commission basis so long as: (i) they are compensated at or above the required minimum wage rate for all hours worked; and (ii) are paid overtime for any hours worked in excess of 40 hours in a single work week.

In addition to FLSA requirements, an employer is still required to comply with any applicable state or local wage and hour laws.

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Other Proposed Changes

The NPRM also includes the following:

- An increase in the total annual compensation requirement for “highly compensated employees” subject to the “minimal duties” test from \$100,000 to \$147,414 annually;
- Employers may use non-discretionary bonuses and incentive payments (including commissions) that are paid annually or more frequently to satisfy up to 10 percent of the standard salary level; and
- A statement of commitment by the DOL to periodically review the salary threshold.

The NPRM does not change the “duties test” for determining exempt status or change the current overtime protections for police officers, firefighters, paramedics, nurses, laborers or non-management employees working in maintenance, construction, or other similar occupations.

Additional information about the proposed rule is available at [here](#). Once the proposed rule is published in the Federal Register, interested members of the public will have 60 days to submit comments by visiting www.regulations.gov.



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