



Federal eAlert

DOL Proposes New Overtime Rule

March 11, 2019

The Department of Labor has released a new proposed rule to increase the minimum salary that an employee must earn to be exempt from minimum wage and overtime under a white collar exemption.

The Rule

The proposed rule requires that salaried exempt executive, professional, administrative, and computer employees must be paid at least \$679 per week on a salary basis, an increase from the current minimum of \$455 per week. The rule allows for non-discretionary bonuses and incentive payments to account for up to 10% of the minimum, so long as they are paid out on at least an annual basis; currently commissions and bonuses cannot be counted toward the minimum.

The DOL also proposes that highly compensated employees must be paid at least \$147,414 per year to qualify as exempt. Of that amount, at least \$679 per week must be paid on a salary or fee basis.

The anticipated effective date of this rule is January 2020.

The Department of Labor intends to update these minimums every four years based on increases to the Consumer Price Index. These increases will not be automatic, but will likely be done through notice and comment rulemaking, just as they are doing with this proposed rule.

Duties Test

There are no proposed changes to the duties tests for the various white collar exemptions. Employers should be aware that paying someone a minimum salary does not necessarily mean they are properly classified as exempt. Each of the exemption types mentioned above has a corresponding duties test. If the duties test is not met by the employee, then they are non-exempt and entitled to minimum wage and overtime, regardless of the method or amount of pay. You can learn more in the HR Support Center by entering the word exempt into the search bar.

State Law

California and New York (and soon Washington) already have laws in place that make the minimum salary for exempt white collar employees higher than these proposed thresholds. As employers must follow the law that is more beneficial to employees, the new proposed federal minimums would not affect employers in these states.

Resources

Numerous resources to help employers navigate this change are available in the HR Support Center. Search FLSA Changes to find a Decision-Making Guide, Implementation Guide, information about the duties tests, and more.

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