

US Department of Labor Proposed Overtime Exemption Rule

August 31, 2023

To: SAHEC Policy Group

From: Active Policy Solutions

Summary

Through this proposed Rule, the US Department of Labor (DOL) seeks to update and revise existing regulations under the Fair Labor Standards Act ([29 U.S.C. § 203](#)) as related to exemptions from minimum wage and overtime pay requirements for various classes of employees. The proposed Rule would also add an automatic updating mechanism for exemption earning thresholds and expand the salary thresholds to US territories, except for American Samoa.

The new minimum threshold would be \$1,059 per week (\$55,068 annually for a full-year worker) and would apply to [executive](#), [administrative](#), [professional](#), [outside sales](#), and certain computer employees.

As is customary with proposed regulations, the DOL invites comments from the general public to gauge how this Rule change may impact workers and corporations. *The notice of proposed rulemaking (NPRM) is pending publication on the federal register. Once the NPRM becomes officially published, the Department of Labor will accept comments on the proposed Rule for 60 days.*

Background

During the Obama Administration, a similar Rule was finalized, but never went into effect due to it being challenged in court and the Rule eventually being withdrawn by the succeeding Trump Administration. Before the Rule was withdrawn (more precisely, not defended), a group of SAHEC organizations sent a letter to the then Director of the Division of Regulations, Legislation, and Interpretation Wage and Hour Division at the US Department of Labor outlining concerns and suggesting courses of action to address those concerns.

To be exempt, you must either 1) exceed the salary limit and meet the commonly referred to as the “white-collar” or executive, administrative, or professional (EAP) exemption¹ or 2) have a salary that exceeds an upper threshold.

¹ Note: This memo does go into the EAP test, but that information can be provided if requested.

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The current exempt lower salary limit, last updated in 2019, is a salary basis of at least \$684 per week or \$35,568 annual equivalent (or \$455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the US Virgin Islands by employers other than the federal government, or \$380 per week if employed in American Samoa by employers other than the federal government).

Details

The proposed Rule includes the following changes:

- 1. Raises overtime salary threshold to qualify for non-exempt status.** The proposed Rule would raise the salary threshold by which [executive](#), [administrative](#), [professional](#), [outside sales](#), and certain computer employees would be eligible to receive statutory overtime pay and be subject to minimum wage laws. The threshold proposed is based on the 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region (currently the regional South) – \$1,059 per week (\$55,068 annually for a full-year worker).
- 2. Updates the earnings threshold for the highly compensated employee (HCE) exemption.**
 - a. On the other end of the spectrum, the proposed Rule would increase the ceiling salary threshold at which an employee performing non-manual work could be exempt from overtime/minimum wage regulations.
 - b. The DOL is proposing increasing the HCE total annual compensation threshold to the annualized weekly earnings amount of the 85th percentile of full-time salaried workers nationally (\$143,988).
 - c. The DOL's aim is to set the HCE threshold high enough to exclude employees who are at the "top of the economic ladder" and guard against the unintended exemption of workers who are not bona fide EAP employees, including those in high-income regions and industries.²
- 3. Automated updates of thresholds.** Currently, the threshold values are not changed without legislative or Rule-making action. The DOL is proposing creating an automatic updating process by which the thresholds would change based on set salary level data.
- 4. Applying US territories.** The proposal would apply the above thresholds to US territories (except for American Samoa) as opposed to the current process of setting differing thresholds for the territories.

Providing Comments

As previously discussed, the DOL will collect comments on this proposed Rule for 60 days. Anyone who submits a comment (including duplicate comments) should understand and expect that the comment, including any personal information provided, will become a matter of public

² <https://www.federalregister.gov/d/04-9016/page-22174>

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record and will be posted without change to www.regulations.gov.³ The comment period will officially begin once the NPRM is published on the federal register, which can be expected the week of August 31, 2023.

See Also

- [Proposed Rule by the US Department of Labor](#)
- [Proposal: Restoring and Extending Overtime Protections information published by the US Department of Labor](#)
- [Frequently Asked Questions Regarding Overtime Proposed Rule](#)
- [Washington Post coverage](#)

³ Notice of proposed rulemaking: Defining and delimiting the exemptions for executive, administrative, professional, outside sales, and computer employees (no date) DOL. Available at: <https://www.dol.gov/agencies/whd/overtime/rulemaking> (Accessed: 30 August 2023).