



U.S. DEPARTMENT OF LABOR ISSUES PROPOSAL TO ADDRESS OVERTIME RULES FOR 2020

On September 27, 2019, the Department of Labor (DOL) issued a final rule updating the salary and compensation levels needed for workers to be exempt from overtime requirements beginning in 2020. The rule's provisions are based on responses to the March 2019 proposed rule, a 2017 Request for Information, and a series of listening sessions held around the country. The [final rule](#) includes the following major changes:

- (1) increase the standard salary level to \$684 per week (\$35,568 annually for a full year worker) up from \$455 per week (\$23,660 annually);
- (2) increase the total annual compensation requirement needed to exempt highly compensated employees to \$107,432 annually – significantly less than the \$147,414 proposed in March, but up from the currently enforced level of \$100,000 annually;
- (3) allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the standard salary level, provided these payments are made on an annual or more frequent basis; and
- (4) conduct periodic reviews to update the salary threshold, rather than allowing automatic updates, requiring ongoing proposed regulations for comment.

FLSA “White Collar” or “EAP” Exemption

Under the FLSA, non-exempt employees must receive a minimum wage and overtime wages for work conducted in excess of 40 hours a week. However, the FLSA also allows certain employees to be exempt (white collar exemption) from these minimum wage and overtime requirements if they work in executive, administrative, professional or outside sales duties and can meet the following requirements:

- Employee must be paid on a salary basis that is not subject to reduction based on the quality or quantity of work conducted (e.g., paid on an hourly basis).
- Employee must receive a salary at a rate not less than \$684 per week (updated from \$455 per week in the final rule).
- Employee primary duties must involve the kind of work associated with the exempt status categories allowed under law (executive, administrative, professional, outside sales).

Exemptions for Certified Athletic Trainers

The DOL final rule does not specifically address exemptions for certified athletic trainers. However, a DOL [fact sheet](#) issued in April 2018 made clear that in higher education, learned professionals including certified athletic trainers can be eligible for the professional exemption from minimum wage and overtime rules if they satisfy the following three requirements:

- The employee's primary duty is the performance of work requiring advanced knowledge.
- The advanced knowledge is in a field of science or learning.
- The advanced knowledge must be acquired by a prolonged course of specialized intellectual instruction.

If the employee is a teacher, or practicing law or medicine, they do not need to satisfy the above-referenced salary basis and salary level tests to be an exempt professional.

Background and Timeline on Overtime and Minimum Wage Regulations

- March 13, 2014, President Obama signed a Presidential Memorandum directing the DOL to update the regulations defining which white-collar workers are exempt from the Fair Labor Standards Act's (FLSA) minimum wage and overtime requirements. The FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments.
- July 6, 2015, the DOL issued a Notice of Proposed Rulemaking (NPRM) - [*Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees*](#) (80 Fed. Reg. 38515, July 6, 2015). The DOL proposed to update and revise the regulations issued under the FLSA implementing the exemption from minimum wage and overtime pay for executive, administrative, professional, outside sales, and computer employees. To be considered exempt, employees would need to meet certain minimum tests related to their primary job duties and be paid on a salary basis at not less than a specified minimum amount. The standard salary level required for exemption would be \$455 a week (\$23,660 for a full-year worker). The exemption standard was last adjusted in 2004. The DOL proposed to raise the salary threshold under which white-collar workers and highly compensated employees are exempt from FLSA overtime pay requirements to \$913 a week (\$47,476 annually).
- May 23, 2016 a [Final Rule](#) was published in the Federal Register and was scheduled to take effect on December 1, 2016. DOL estimated that this change would make 4.2 million currently exempt workers eligible for overtime pay, assuming employers do not change employees' salaries and/or relevant duties in order to avoid exemption.
- November 22, 2016, U.S. District Judge Amos Mazzant III (President Obama appointee) of the Eastern District of Texas, issued a temporary injunction delaying implementation of the rule in order to determine DOL's authority to issue the rule. The injunction was later extended on more than one occasion.
- July 28, 2017, the DOL submitted a court filing which stated, "The department has decided not to advocate for the specific salary level (\$913 per week) set in the final rule at this time and intends to undertake further rulemaking and will determine what the salary level should be.
- April 20, 2018, the DOL under the Trump Administration issued its first wage and hour opinion letters and a fact sheet stating that new rulemaking is imminent to revise current regulations located at 29 C.F.R. part 541, governing the exemption of executive, administrative, and professional employees from FLSA minimum wage and overtime pay requirements.
- March 22, 2019, the DOL issued a proposed rule to update the salary and compensation levels needed for workers to be exempt beginning in 2020.