



Salary Threshold Proposed Rulemaking: What Employers Need To Know

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The U.S. Department of Labor [published its long-awaited proposed rule](#) raising the salary level threshold for exempt employees from \$35,568 per year (\$684 per week) to \$55,068 per year (\$1,059 per week). While the rule addresses only one factor of the three-factor test to determine whether an employee is exempt from overtime, salary basis and duties tests being the others, it is the most objective factor. Indeed, the Department of Labor estimates that this increase will make more than 3.5 million employees eligible for overtime.

The proposed rule will be open for public comment for 60 days after publication in the Federal Register, sometime after which the rule will go final.

The proposed rule also increases the threshold for “highly compensated employees,” which has a more lenient duties test, from \$107,432 per year to \$143,988 per year. The proposed rule establishes automatic increases every three years. Under this proposed “mechanism” the salary threshold would increase every three years to the 35th percentile of weekly earnings of full-time non-hourly employees in the lowest-wage Census Region, currently the South.

For highly compensated employees, the salary threshold would automatically increase to the 85th percentile of full-time non-hourly employees nationally. Such increases would be subject to a comment period, and could be delayed

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where “economic or other conditions merit.”

Employers should look for this proposed rule to go final around the end of 2023. Once the rule becomes final, it will no doubt be challenged by business groups, much like the Obama-era rule, which also attempted to make increases automatic before being blocked by a Texas federal court in 2017. This 2017 ruling will undoubtedly be relied upon by business interests to try to block the latest proposed rule, once it goes final. Nevertheless, employers should consider reviewing their salaried employee population to determine whether any employees will be affected once the rule becomes final.