

# Biden Administration Proposes Significant Increase to Minimum Salary Threshold for White-Collar Exemptions?

Labor & Employment Workforce Watch

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The United States Department of Labor (“DOL”) recently announced a potential new rule that will significantly raise the minimum salary for employees to qualify for the so-called “white-collar exemptions” (administrative, executive, and professional employees, among other classifications) to the overtime requirements of the Fair Labor Standards Act (“FLSA”).

The white-collar exemptions allow employees that meet certain duty requirements to be exempt from the overtime rules of the FLSA, which generally require employees working in the United States to be paid time-and-one-half of their regular rate of pay for all hours worked over 40 in a work week. In addition to being required to satisfy these duties tests to be considered exempt, such employees must also receive a minimum weekly/annual salary in order to meet this exemption.

The DOL published the “Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees” rule in the Federal Register on September 8, 2023. This rule would raise the minimum salary threshold for the white-collar exemption from \$684 to \$1,059 per week, and from approximately \$35,568 to \$55,068 per year. The DOL projects that these changes would restore or extend overtime pay protections to 3.6 million American workers.

In addition, the proposed rule increases the salary threshold for the so-called “highly compensated employee” exemption from \$107,432 to \$143,988, tied to the 85th percentile of salaried workers nationally. The highly compensated employee exemption allows employees who make over a certain amount in total compensation to be exempt from the FLSA’s overtime requirements under a much lower set of standards because “a very high level of compensation is a strong indicator of an employee’s exempt status, thus eliminating the need for a detailed duties analysis.”<sup>[1]</sup> Essentially, as long as an employee meets that minimum total compensation threshold, primarily performs “office or non-manual work,” and can meet one element of any of the administrative, executive, professional, or other white-collar exemptions, the exemption applies.<sup>[2]</sup>

Under the proposed rule, the salary threshold for the white-collar exemptions and the highly compensated employee total compensation requirement will automatically increase every three years to reflect current earnings data. The white-collar exemption threshold would be adjusted to remain at the 35th percentile of weekly earnings

of full-time non-hourly workers in the lowest-wage census region (currently the South). The highly compensated employee total annual compensation requirement would remain at the annualized weekly earnings of the 85th percentile of full-time non-hourly workers nationally.

Similar proposals to increase these salary thresholds have been attempted by prior administrations, but due to legal challenges, not all were implemented. In 2016, the Obama Administration sought to raise the annual salary threshold from \$23,660 to \$47,476, but that rule was eventually blocked by a federal court in Texas in 2017. Eventually, in 2019 the Trump Administration raised the salary threshold for the white-collar exemptions from \$23,660 to the current minimum salary of \$35,568.

This proposed rule is currently in the 60-day public comment period, which is due to expire on November 7, 2023. The DOL will consider all comments received before publishing a final rule. It remains to be seen whether the DOL will modify the proposed rule following the public comment period, or whether any legal challenges will delay or defeat its implementation. However, employers should begin reviewing their pay practices and their employees' exemption status to determine whether changes would need to be made to comply with the new rule and how best to implement those changes if the rule is finalized.

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<sup>[1]</sup> 69 FR 22173–74.

<sup>[2]</sup> 29 CFR § 541.601(d).

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