

DOL Expected to Raise the Salary Basis Threshold

Labor & Employment Workforce Watch

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The United States Department of Labor (“DOL”) is expected to propose a new salary threshold for various overtime exemptions under the Fair Labor Standards Act (“FLSA”). The new proposal is likely to be issued in the near future and could be issued as early as this month. Many expect the DOL to increase the threshold from its current minimum salary amount of \$684/week—potentially impacting millions of employees across the United States.

Under the FLSA, employees must receive overtime pay of at least one and one-half times their “regular rate” of pay for work in excess of forty hours per workweek. However, Section 13(a)(1) of the FLSA provides an exemption from overtime pay for individuals employed as bona fide [executive](#), [administrative](#), and [professional](#) employees and who receive pay on a “[salary basis](#)” of not less than \$684/week. These exemptions are commonly referred to as the “white-collar” or “EAP” exemptions.

The salary basis threshold has been raised numerous times since Congress enacted the FLSA in 1938. Of note, in 2016, the Obama administration attempted to raise the salary basis threshold from \$455/week to \$921/week. Ultimately, Judge Amos Mazzant in the United States District Court for the Eastern District of Texas enjoined the new threshold from going into effect after determining the salary increase of more than 100% contravened Congress’s intent by supplanting the job duties test and creating “a de facto salary-only test.” At the time, the DOL estimated that the \$921/week threshold would make more than 4.2 million workers ineligible for a white-collar exemption and eligible for overtime pay. Before the Fifth Circuit reviewed Judge Mazzant’s decision, the Trump administration rescinded the rule and raised the salary threshold to the current \$684/week standard.

How much of a salary increase the DOL will propose and if it will seek to index the threshold to some cost of living measure remains unknown at this time. Many unions and other worker advocates believe the DOL should match or exceed the \$921 salary level of the 2016 proposed rule, with several groups demanding the salary level be set at \$1,000 per week. If such an increase is proposed, it will impact millions of workers and almost certainly meet resistance in federal courts from private employers and business groups. Many experts expect the DOL to set the salary threshold around \$800 – the mid-point between the current level and the proposed 2016 level.

Regardless of the ultimate increase in the salary level, employers who rely on the white-collar exemptions should be on notice of potential changes. Although the DOL will almost certainly grant employers several months of lead-up time before implementing the new threshold, understanding the potential impact of a dramatic increase now will help employers adjust in the future. Employers should carefully review all pay practices, exemptions from overtime, and potential FLSA liability in light of these potential changes.

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