

Minimum Salary Threshold for Pennsylvania White Collar Exemptions to Increase in 2021 and Beyond

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UPDATE: On June 30, 2021, as part of Pennsylvania's state budget negotiations, Governor Tom Wolf agreed to repeal the amendments to the PMWA regulations. As a result, employers in Pennsylvania no longer need to plan for the upcoming increases to the three white collar exemptions later this year and beyond. The minimum salary threshold instead will remain at \$684 per week (or \$35,568 annually), which is consistent with federal law.

The Pennsylvania Department of Labor & Industry recently amended Pennsylvania Minimum Wage Act (PMWA) regulations to increase the minimum salary employees must receive in 2021 and beyond to qualify for one of the so-called "white collar" (*i.e.*, executive, administrative, and professional) exemptions from overtime pay. The final rule became effective on October 3 after its publication in the [Pennsylvania Bulletin](#). Consequently, the state overtime regulations under the PMWA will now differ from the federal overtime regulations under the Fair Labor Standards Act (FLSA) in two important ways. First, starting on October 3, 2021, the PMWA will require a higher minimum salary than required by federal law. Second, the minimum salary required under the PMWA will adjust automatically every three years starting in 2023.

The primary changes to the PMWA overtime regulations include:

Increase to the minimum weekly salary threshold. To qualify for one of the three white collar exemptions under the PMWA, an employee will now need to earn a minimum weekly salary of:

- \$684 (or \$35,568 per year) (consistent with federal law);
- \$780 (or \$40,560 per year), beginning on October 3, 2021; and
- \$875 (or \$45,500 per year), beginning on October 3, 2022.

The minimum weekly salary of \$684 in effect through October 2, 2021 mirrors the minimum weekly salary required by [federal law](#). As such, Pennsylvania employers will not need to account for any state-specific October 3, 2021 when the minimum salary increases to \$780 per week and then again on October 3, 2022 when the minimum salary increases to \$875 per week. Pennsylvania employees otherwise exempt under the duties test but making less than the specified minimum weekly salary must be paid overtime for all hours worked in excess of 40 in a

workweek at a rate of not less than 1.5 times the employee's regular pay rate.

Automatic three-year minimum salary adjustment. Starting in 2023, and every three years thereafter, the minimum weekly salary threshold will be readjusted to “a rate equal to the weighted average 10th percentile wages for Pennsylvania workers who work in the exempt executive, administrative, or professional classifications as determined by the Department with advice and consultation by the Minimum Wage Advisory Board and based on an annual wage survey of all worker classifications conducted by the Department.” Otherwise, exempt employees whose compensation falls below the adjusted minimum salary must receive a weekly salary increase to remain qualified for a white collar exemption.

Calculation of minimum wage may include incentive pay. Similar to the FLSA's overtime rule changes, the PMWA will permit employers to count certain nondiscretionary bonuses and incentive payments (including commissions) paid at least annually toward as much as 10% of the minimum salary threshold.

Slight modifications to the duties tests. The three white collar exemptions' duties tests under state law were also amended to more clearly mirror their federal counterparts under the FLSA.

Pennsylvania employers will need to keep these amended PMWA regulations in mind when planning employee salaries for 2021, 2022, and beyond. Employers should also remember that even if an employee earns the minimum weekly salary required to qualify for one of the white collar exemptions, if the employee does not actually perform the duties of an executive, administrative, or professional employee, the employee will not be considered exempt and must be paid overtime. As such, now is the perfect time for an employer to conduct a privileged review of the job duties performed by employees making a salary in excess of the FLSA/PMWA minimum salary thresholds to ensure that these employees actually perform primarily exempt duties and are properly classified as exempt. Class and collective actions alleging that certain types of employees are improperly classified as exempt under both federal and state law are costly and common across all industries.

If you have questions concerning the amendments to the PMWA regulations, or would like to conduct a privileged review of the job duties performed by your exempt employees to determine if they are properly classified as exempt, please contact any member of the Troutman Pepper Labor and Employment Practice Group.

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