

## US DOL Proposes Salary Minimum Increases for Overtime Exemptions

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The U.S. Department of Labor (DOL) recently announced proposed revisions to the salary requirements of the white collar and highly compensated employee (HCE) exemptions under the Fair Labor Standards Act (FLSA). According to the DOL, the proposal "would make more than a million more American workers eligible for overtime."

### Current Law

Under the FLSA, white collar exemptions from overtime requirements are provided for executive, administrative and professional employees. To qualify for this type of exemption, the employee generally must:

- be salaried, meaning that the employee is paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work;
- be paid more than \$455 per week, or \$23,660 annually; and
- primarily perform executive, administrative or professional duties.

Under the HCE exemption, employees are also exempt from overtime requirements if they are paid a total annual compensation of at least \$100,000, receive at least \$455 per week on a salary basis, perform office or non-manual work and customarily and regularly perform at least one of the exempt duties or responsibilities of an executive, administrative or professional employee.

### Proposed Rule

As reported in a November 2016 alert, "White Collar Overtime Regulations Temporarily Blocked," this is not the DOL's first attempt to change the exemptions' requirements. In 2016, a Texas federal court blocked the DOL from implementing its revised overtime exemptions that would have increased the annual salary requirement to \$47,476 for the white collar exemption and \$134,004 for the HCE exemption. The current proposed changes would replace the 2016 rule that never went into effect.

The 2019 proposed rule seeks to:

- increase the annual minimum salary requirement for the white collar exemptions to \$35,308, while providing employers the ability to use nondiscretionary bonuses and incentive payments to satisfy up to 10% of the required salary level; and
- increase the minimum annual compensation needed to qualify for the HCE exemption to \$147,414.

The proposed rule does not provide for automatic adjustments to the salary threshold and it does not revise the job duties tests for the white collar exemptions. Once the proposed rule is published in the Federal Register, the public will have 60 days to submit comments. A final rule will then be published, with an anticipated effective date of January 2020.

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## Recommendation

We recommend that employers begin a review to determine the likely impact of a final rule and whether adjustments in policies, pay practices and budgets may become necessary. Employers are strongly encouraged to consider how the final rule will also interrelate with corresponding exemptions under state and local law. We remain available to provide counsel through the assessment process and in fashioning and implementing a response to these anticipated changes.

For questions or guidance on this recent development or other employment law matters, please contact George Morrison (610.782.4911; [morrisong@whiteandwilliams.com](mailto:morrisong@whiteandwilliams.com)) or any member of our Labor and Employment Group.

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.

