

DOL Proposes New Overtime Salary Threshold

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The Department of Labor (DOL) announced a **notice of proposed rulemaking** (NPRM) that would increase the Fair Labor Standards Act's (FLSA's) annual salary-level threshold to \$55,068 from \$35,568 for white-collar exemptions to overtime requirements. The proposed rule would make about 3.6 million more U.S. salaried workers eligible for overtime pay, according to the DOL. It will likely have the biggest impact on retail, food, hospitality, manufacturing, and other industries where many managerial employees do not meet the new threshold. The rule also proposes automatic increases to the overtime salary threshold every three years to reflect current earnings data.

Under the FLSA, almost all U.S. hourly workers are entitled to overtime pay after 40 hours a week, at no less than time-and-half their regular hourly rates. But "white-collar" salaried workers who perform executive, administrative, or professional duties are exempt from that requirement unless they earn a salary below a certain threshold.

An effort by the Obama administration to raise the salary threshold of the overtime test to \$47,476 was blocked in federal court in 2017. The Texas-based U.S. district court found that the Obama-era salary threshold was so high that it made the job duties portion of the exemption test irrelevant and expanded protections to workers that Congress sought to exclude.

That ruling could be used against the latest proposal by the DOL if a court were to similarly agree that the new threshold relegates other parts of the test. The new rule does not include any major changes to the provisions regarding job duties.

The DOL's NPRM is subject to a 60-day period of public comment and likely would not take effect for months. Miller Canfield will continue to monitor and report on further developments. As always, please contact your Miller Canfield attorney or the authors of this alert if you have questions.