

Additional Nelson Mullins Alerts



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DOL Proposes Changes to FLSA Overtime Rules

By [Michelle W. Johnson](#), [Amy B. Cheng](#)

On Thursday, March 7, 2019, the U.S. Department of Labor (DOL) published a proposed rule which would increase annual minimum salary requirements for exempt “white collar” executive, administrative, and professional employees.

The DOL’s proposed rule would increase the salary floor for salaried exempt employees by doing the following:

- Increase the minimum salary threshold from \$455 per week (\$23,660 annually) to \$679 per week (\$35,308 annually).¹ All employees who are paid a salary falling below the proposed new threshold will become non-exempt employees.
- Increase the annual compensation level for employees subject to the highly compensated employee exemption (HCE) from \$100,000 to \$147,414. All employees who are paid a salary below \$147,414 will lose the HCE exemption, although they may qualify for another exemption.
- Allow employers to pay 10% of an employee’s salary, annually, using nondiscretionary bonuses and incentive payments (including commissions). Additionally, the DOL’s proposed rule permits a “catch-up” payment at the end of the year (towards the previous year’s salary) if the nondiscretionary bonuses and incentive payments (including commissions) are not large enough to satisfy the required minimum salary level.

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If the DOL's proposed rules go into effect on or about January 2020, this would be the first increase since 2004, and roughly 1.1 million currently exempt workers who earn more than \$455 per week, but less than \$679, will be affected by the proposed rule.² An additional 201,100 employees who are currently subject to the HCE exemption but earn less than \$147,414 per year could also become eligible for overtime. The DOL proposed that the salary levels should be revisited every four years.

Employers should begin to review their employee classifications and prepare to adapt to the coming rules. Preparations should include the reclassification of employees who will no longer meet the salary threshold requirements, consideration of pay adjustments, where appropriate, to bring currently exempt employees up to the new salary threshold, and training of formerly-exempt employees on the requirements of timekeeping systems and FLSA overtime compliance policies.

Nelson Mullins will continue to monitor developments concerning the DOL's proposed changes to these regulations. In the meantime, if you have any questions about the DOL's March 7, 2019 publication of its proposed rules and regulations, including how to navigate through the available options for employees potentially affected by the proposed increase to the salary threshold, please contact Michelle W. Johnson, Amy B. Cheng, or any member of the Nelson Mullins employment group.

¹ While this may seem like a substantial increase, this is considerably less than the Obama-era rule which proposed to increase the minimum salary threshold to \$913 per week (\$47,476 annually).

² The new salary levels will not apply to employers in Puerto Rico, the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands. The current salary level of \$455 will continue to apply in those locations.

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