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U.S. Department of Labor Proposes Changes to Overtime Exemption Salary Thresholds

The U.S. Department of Labor's Wage and Hour Division ("Department") recently published a Notice of Proposed Rulemaking (the "Proposed Rule"), [Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees](#). The Proposed Rule suggests increasing salary thresholds for overtime pay for certain executive, administrative and professional employees under Section 13(a)(1) of the Fair Labor Standards Act ("FLSA").

The FLSA generally requires covered employers to pay overtime pay of one and one-half times the regular rate of pay for all hours worked over 40 in a workweek, unless the employee is considered "exempt" from overtime pay. For certain exemptions to apply, and thus for the employee to be "exempt" from overtime pay, the employee must satisfy certain salary thresholds. Currently, for these exemptions, employees must earn a salary at least \$684 per week, or \$35,568 annually, and be "employed in a bona fide executive, administrative, or professional capacity."¹ Additionally, "highly compensated" employees are considered exempt when they earn a salary of \$107,432 or more per year.²

The Department's Proposed Rule recommends increasing the salary thresholds for those exempt employees who must be paid on a salary basis. Specifically, the Proposed Rule would increase the annual salary threshold for executive, administrative and professional exempt employees from \$35,568 to \$55,068, and from \$107,432 to \$143,988 for the highly compensated employee exemption. This means that if the Proposed Rule is adopted, employees earning between \$35,568 and \$55,068 annually would no longer be exempt from overtime pay. Moreover, the Proposed Rule proposes automatically updating the minimum salary thresholds every three years to reflect then-current earnings data.

The Department is accepting public comment about the Proposed Rule until November 8, 2023. Employers interested in submitting comments are encouraged to utilize the Federal eRulemaking Portal at <https://www.regulations.gov>. After considering all comments to the Proposed Rule, the Department will then likely publish a final rule, which would then become law.

¹29 U.S.C. § 213(a)(1). This exemption also includes certain employees holding outside sales and computer positions. See generally *id.* at § 213.

²29 C.F.R. § 541.601(a)(1).

Although the Proposed Rule is not final and has not taken effect, employers should review their current job classifications for salaried, exempt employees to determine how many of these employees earn between \$35,568 and \$55,068 annually. Employers should then be prepared either to raise these currently exempt employees to the new proposed threshold, or to convert these employees to non-exempt status. In reviewing these options, employers should consider the impact of overtime payments to any potential non-exempt employees. Additionally, employers also should review their wage and hour policies and procedures, including those related to timekeeping and overtime, to ensure compliance with applicable state and federal law.

If you have any questions about the Department's Proposed Rule, or how it may impact your organization, please contact your Kutak Rock attorney, a member of the firm's [National Employment Law Group](#) or [FLSA Litigation and Wage and Hour Defense Group](#). You may also visit us at www.kutakrock.com.

