

DOL FINALLY UNVEILS PROPOSED GUIDANCE AFFECTING OVERTIME

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Today, the U.S. [Department of Labor](#) (DOL) revealed a long-awaited proposed rule that is expected to make millions of workers eligible for overtime pay. (See [Notice of Proposed Rulemaking](#) and the [DOL's presentation](#).) What will this proposed change mean to employers? If enacted, it means those certain employees currently considered to be "exempt" from Fair Labor Standards Act (FLSA) requirements will be *nonexempt* and must be paid overtime if they work more than 40 hours in a week. The proposed new "white collar" exemption affects employees who earn \$50,440 per year (or a projected \$970 per week) — a huge increase over the current threshold of \$23,660 annually (or \$455 per week) that was set in 2004. Under the FLSA, employees are currently "exempt" if (1) their job duties meet the statutory requirements for executive, administrative, professional, outside sales or computer employees and (2) they are paid at least \$455 weekly. The new rule raising the minimum weekly salary, if enacted, will knock countless people out of those exemption categories and into eligibility to receive overtime pay. The DOL also wants to build in automatic updates to the salary threshold so that it does not become outdated between rulemakings. The DOL is playing a bit coy on whether it will eventually propose changes to the duties tests applicable to white collar exemptions, but no such changes appear in the rule released today. The proposed rule will appear in the Federal Register, with a deadline for written comments, which can be submitted at www.regulations.gov. We will continue to provide analysis on the proposed rule and reaction to it.

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