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MORE US EMPLOYEES WOULD BE ELIGIBLE FOR OVERTIME PAY UNDER PROPOSED RULE

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The minimum wage and overtime exempt salary threshold for white-collar (executive, administrative, professional, outside sales and computer) employees would increase under a proposed Fair Labor Standards Act (FLSA) [rule](#) announced by the US Department of Labor.

ACTION COMES AFTER COURT INVALIDATED 2016 RULE CHANGES

To be exempt from overtime pay under the FLSA, employees must generally be paid on a salary basis at or above a specified minimum weekly level and meet certain requirements related to their primary duties. In 2017, a federal court invalidated 2016 regulatory changes that would have more than doubled the salary threshold set in 2004. The DOL's proposal would rescind the 2016 rule and establish a more modest salary threshold. No changes to the duties test are proposed.

PROPOSAL HIGHLIGHTS

The proposed rule would:

- Boost the minimum salary threshold to \$679 a week (\$35,308 annually) — up from \$455 a week (\$23,660 annually).
- Increase the highly compensated employee threshold to \$147,414 annually — up from \$100,000.
- Require evaluation of the threshold every four years, with updates subject to notice-and-comment rulemaking.
- Allow employers to count nondiscretionary bonuses and incentive payments (including commissions) that are paid annually or more frequently to satisfy up to 10% of the salary level.
- Exclude from the new threshold employees in Puerto Rico, the Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands —the 2004 level of \$455 a week will continue to apply for these employees.

Comments are invited until 60 days after publication of the proposed rule in the *Federal Register*.

RELATED RESOURCES

- [Information on the Proposed Rule](#) (DOL, March 7, 2019)

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