

## LAW &amp; POLICY GROUP

**GRIST****FINAL OVERTIME RULE RAISES PAY LEVELS FOR WHITE-COLLAR EXEMPTIONS**

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A final Department of Labor (DOL) [rule](#) increases the salary and compensation levels for workers exempt from the minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA). Effective Jan. 1, 2020, the standard weekly salary level for overtime exemption will rise to \$684 from \$455, while the total annual compensation threshold for an exempt highly compensated employee (HCE) will rise to \$107,432 from \$100,000. The duties test is unchanged. DOL estimates 1.2 million people will become eligible for overtime under the revised salary thresholds, unless employers increase pay levels.

**FINAL RULE INCREASES SALARY THRESHOLDS**

The final rule updates two key amounts for the so-called white-collar exemptions that excuse employers from having to meet FLSA minimum pay and overtime requirements for some higher-paid employees:

- **Standard salary level** — the minimum salary for an exempt employee, currently set at \$455 per week
- **HCE total annual compensation threshold** — the minimum total compensation (including commissions, nondiscretionary bonuses and certain other nondiscretionary compensation) for an exempt HCE (defined differently for this purpose than for nondiscrimination testing), currently set at \$100,000 per year

Under the final rule, the salary level test will increase to \$684 per week, slightly higher than the proposed level of \$679. The HCE total compensation threshold will increase to \$107,432 per year, significantly lower than the proposed level of \$147,414. The final rule also establishes special salary levels for workers in US territories and updates existing special levels for the motion picture producing industry.

Along with using updated data to set the final amounts, the final rule lets nondiscretionary bonuses and incentives (including commissions) — if paid at least annually — to account for up to 10% of the salary level test for non-HCEs. The new regulation formally rescinds a 2016 final rule, which set much higher salary levels but was quickly invalidated by a US district court ([Nevada v. US Dep't of Labor](#), 275 F. Supp. 3d 795 (E.D. Tex. 2017)).

## INDEXING EVERY FOUR YEARS DROPPED, HCE THRESHOLD LOWERED

In response to comments, DOL has made two key changes from the proposed rule. The final rule:

- Eliminates the proposal to index the standard salary level and the HCE total compensation threshold for inflation every four years.
- Sets the HCE threshold at the 80th percentile — rather than the 90th percentile previously proposed — of earnings for full-time salaried workers nationwide.

DOL originally proposed updating the salary level and HCE threshold every four years to promote greater stability, avoid disruptive increases after long gaps between updates and provide wage protection for employees under those standards. In the final rule, the agency instead promises only to update these amounts more regularly to reflect prevailing economic conditions. DOL agreed with commenters that a fixed schedule of updates could reduce the agency's flexibility to adapt to unanticipated circumstances.

## IMPACT ON EMPLOYEE BENEFIT PLANS

The final rule is likely to have a minor impact on employee benefit plans. Retirement plan sponsors paying more overtime might see increased costs in their defined benefit and defined contribution plans. In some cases, nondiscrimination testing might be negatively affected. Employers also could see a change in the population of employees eligible for health and fringe benefits conditioned on exempt or nonexempt status.

## RELATED RESOURCES

### Non-Mercer Resources

- [Final Rule: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees](#) (Federal Register, Sept. 27, 2019)
- [Final Rule: Overtime Update](#) (DOL, Sept. 24, 2019)
- [Nevada v. US Dep't of Labor](#), 275 F. Supp. 3d 795 (E.D. Tex. 2017)

### Mercer Law & Policy Resources

- [Proposed Overtime Rule May Affect Employee Benefit Plans](#) (April 24, 2019)
- [US: More Employees Would Be Eligible for Overtime Pay Under Proposed Rule](#) (March 18, 2019)

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