

U.S. DOL PROPOSES NEW “WHITE COLLAR EXEMPTION” RULES

Hodgson Russ Labor & Employment Alert
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Last evening, the U.S. Department of Labor released a proposed amendment to the regulations that establish minimum wage and overtime exemptions for executive, administrative, and professional employees under the Fair Labor Standards Act (these exemptions are commonly known as the “white collar” exemptions). If adopted, these regulations would re-define who qualifies for overtime and minimum wage exemptions. The proposed regulations are available [here](#).

The proposed regulations state, in critical part:

- The minimum salary levels for professional, executive and administrative employees would increase to \$679.00 per week (\$35,308 annually). Currently, to be exempt from minimum wage and overtime under the federal rules, employers are required to pay administrative, professional and executive employees at least \$455 per week (\$23,660 annually) on a salary basis. In New York, however, the minimum salary level for administrative and executive employees is \$1,125/week for large New York City employers, \$1,012.50/week for small New York City employers, \$900/week for employers in Long Island and in Westchester, and \$832/week for employers in the rest of the State. However, there is no minimum salary requirement for “professional” employees under New York law. Thus, the proposed rule, if adopted, would require employers in New York State to pay employees who are classified as exempt solely under the “professional” exemption a salary of at least \$670/week, paid on a salary basis, to preserve those employees’ exempt status.
- Under the federal rule, employers would be able to satisfy up to 10% of the minimum salary requirements through non-discretionary bonuses and commission payments. The current regulations do not permit this. This 10% allowance would not apply to an employee’s \$679 salary requirement under the “highly compensated employee” exemption. To take advantage of this 10% rule, the additional compensation must be paid annually or less frequently. An employer is also permitted to make a “catch-up” payment following the end of a year in order to satisfy the minimum salary requirements for an exempt employee. The catch-up payment, however, must be made no later than the next pay period after the end of the year.
- For employees classified as exempt under the “highly-compensated” exemption, the annual compensation requirement will increase from \$100,000 to \$147,414.

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The US DOL estimates that this change will impact 201,100 employees who currently earn between \$100,000 and the proposed amount.

- The U.S. DOL proposes to update the annual salary levels every four (4) years through formal notice-and-comment rulemaking. The minimum salary thresholds will not increase automatically.
- The U.S. DOL is not proposing any changes to the duties that employees must perform in order to be exempt from minimum wage and overtime requirements.

Please contact us if you have questions regarding the proposed rule or its potential impact. We will be providing more information about these important changes to the wage-and-hour rules as they develop. If you received this alert from a third party or from visiting our website and would like to be added to our Labor & Employment Practice or any other mailing list, please visit us at bit.ly/HodgsonSignUp