



# Pennsylvania Proposes More Than Doubling the Salary Level for Overtime Exemptions

Insights

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On June 12, 2018, the Pennsylvania Department of Labor and Industry (“DLI”) submitted a proposed rulemaking to amend the regulations that exempt executive, administrative, and professional (EAP) salaried workers from overtime requirements under the Minimum Wage Act of 1968.

## New Salary Threshold

The proposed rulemaking states that Pennsylvania has not updated its regulations since 1977 and thus “Pennsylvania’s EAP salary thresholds have failed to keep pace with economic growth and the rising nominal salaries of exempt salaried workers.” In response, the proposed regulations increase the EAP salary threshold from the current \$250 per week to the following:

- \$610 per week (\$31,720 annually) effective on the date the final rule is published in the Pennsylvania Bulletin;
- \$766 per week (\$39,832 annually) effective one year after the publication of the final rule; and
- \$921 per week (\$47,892 annually) effective one year later.

Three years after the publication of the final rule in the Pennsylvania Bulletin and January 1 of every three years thereafter, the salary threshold will be updated to “the 30<sup>th</sup> percentile of weekly earnings of full-time non-hourly workers in the Northeast Census region in the second quarter of the prior year as published by the United States Department of Labor, Bureau of Labor Statistics.” The proposed regulations also allow up to 10% of the salary amount to be paid with “non-discretionary bonuses, incentives or commissions” that are paid, at a minimum, on a quarterly basis

## Revised Duties Test

In order to qualify for exemption, EAP employees not only must meet the salary threshold, but also must meet certain job duty requirements. DLI stated that the proposed amendments seek to align Pennsylvania’s regulations with the duties test in the U.S. Department of Labor’s (“USDOL”) regulations. Consistent with this, the proposed regulations eliminate the requirement that exempt EAP employees must not devote more than 20% of their hours in a workweek to activities that are “not directly and closely related to” or “an essential part of or necessarily incident to” the duties outlined in the regulations. The proposed regulations also clarify that an administrative exempt employee “customarily and regularly exercises discretion and independent judgment with respect to matters of significance” consistent with the wording of the federal regulations.

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Although these amendments further align the duties test with the federal regulations, DLI's proposed regulations still include requirements that are not present in the federal regulations. For example, the proposed regulations require that executive employees "customarily and regularly exercise discretionary powers" in order to qualify for exemption—a requirement that is not included in the federal regulations.

### **Next Steps**

It is not clear what final form the DLI regulations will take and the new salary threshold will likely be challenged. In fact, DLI acknowledged that USDOL's attempt to update the salary threshold under FLSA to \$47,456 in 2016 was struck down by a Texas federal court on the basis that the salary threshold "was so high it rendered the duties test for the EAP exemptions irrelevant."

Once the proposed regulations are published in the Pennsylvania Bulletin, the public will have 30 days to submit written comments about the proposed amendments.

We will continue to monitor developments and provide updates as they are available. Please consult your Fisher Phillips attorney with any questions.