



USDOL Releases Proposed Exemption Changes (Overtime Rule 2.0)

Insights

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We previously summarized the USDOL's proposed white-collar exemption changes a/k/a Overtime Rule 2.0, including a minimum salary threshold of \$679 per week. The proposed rule now has been published in the [Federal Register](#). The public comment period will close on [May 21, 2019](#).

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March 7, 2019 by [Caroline Brown](#)

The USDOL's long-awaited proposed white-collar exemption changes a/k/a Overtime Rule 2.0 has been made [available](#). Once it is published in the Federal Register, the public will have 60 days to submit comments regarding, among other things, the proposed minimum salary threshold of **\$679 per week**.

Proposed Rule In A Nutshell

Our Legal Alert will refresh your memory as to how we got here, but this is what you need to know now.

- The proposed minimum salary threshold is \$679 per week (which annualizes to \$35,308 per year).
- The proposed rule provides for one threshold regardless of which exemption, industry, or locality, subject to a few exceptions that already exist.
- The additional total annual compensation requirement for the highly-compensated employee exemption has a proposed entry level of \$147,414 per year.
- No changes were proposed to the duties tests for the exemptions.
- No “automatic” updates were proposed.
- The unnecessary 90/10 approach with respect to certain non-discretionary pay has been teed up again.

Second Time Around

You haven't been looking forward to this day, but you've learned a thing or two.

Context: Remember, don't be led astray. Even the USDOL's summary might lead some to think this change relates to all exemptions instead of just the white-collar exemptions (and then, not even all variations). The minimum salary threshold does not apply to, for example, employees exempt from overtime only, outside salespersons, or certain learned-professional employees. It also does not require a traditional salary per se – just as the law does not now.

Perspective: If we've learned anything from the Overtime Rule 1.0 it is that this is a process. Do not run out and make changes tomorrow based on a *proposal*, but do start evaluating what 2020 might look like if this is what USDOL ultimately adopts.

Experience: Some employers conservatively made changes in anticipation of the \$913 per week threshold, so even if the Final Rule is higher than \$679 per week these employers are in good shape. Many other employers still have a leg up in that they undertook detailed analyses (including duties) of their exempt-classified employees in 2016 and likely already know where to focus this time around.

Timeframe: Overtime Rule 1.0 was a painfully long process for employers. While we hope there will be tweaks in the Final Rule (the proposal contains some of the same flaws as Overtime Rule 1.0), Overtime Rule 2.0 was written with the benefit of all the prior feedback and litigation. As a result, we can expect a quick turnaround, comparatively, from the government. What remains to be seen is what interested parties might do once there is a Final Rule, but that is a few months out.

The Bottom Line

While the proposed changes in Overtime Rule 2.0 are not as shocking, employers in certain locations or industries might contemplate submitting thoughtful, substantive comments still, and should coordinate with legal counsel before taking this path.

We will be assessing the situation and provide necessary updates, so you should ensure you are subscribed to Fisher Phillips' alert system to gather the most up-to-date information, and continue to follow our Wage And Hour Blog to see our latest commentary.,

Service Focus

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