



# Preparing for the New FLSA “Overtime Rule”

Insights

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For the last several months, we have all been eagerly awaiting USDOL’s final “Overtime Rule” – to hopefully finally put to bed the confusion that has filled the air for nearly three years. As of Tuesday, the suspense is over – the USDOL announced the revised Overtime Rule, which will set the minimum salary threshold for the Fair Labor Standard Act’s white-collar exemptions at \$684 per week, or \$35,568 per year. The rule, which USDOL estimates will expand overtime pay obligations to an estimated 1.3 million additional workers, will take effect on January 1, 2020.

You can read all the details in our [Legal Alert](#), but here are the highlights.

## Proposed Rule In A Nutshell

- The minimum salary threshold will be \$684 per week, annualized to \$35,568 per year.
- The rule provides for one threshold regardless of exemption, industry, or locality, subject to a few exceptions that already existed.
- Employers will be able to credit certain non-discretionary payments in limited ways.
- The highly compensated employee exemption’s additional total annual compensation requirement will be set at \$107,432 per year.
- No changes will be made to the duties tests – the crux of the relevant exemptions.
- The changes are limited to the executive, administrative, professional, and derivative exemptions.
- No change has been made to the various other exemptions (for example, outside sales) that do not specifically include a salary requirement even if the employee happens to earn a salary.
- There will be no “automatic” updates, or even a formal schedule of future adjustments to these figures.
- However, you can expect that the salary threshold will be assessed more frequently than it has been in the past, but hopefully not so often that it essentially drives the market.

## Will This Rule Survive?

Despite the drama surrounding Overtime Rule 1.0, you should be preparing as if this rule will go into effect as planned on January 1, 2020.

The new rule skirts some of the more problematic areas that existed with the first attempt at revisions. Moreover, while the rule contains some of the same flaws as Overtime Rule 1.0, they

...generally are not the kinds of concerns that were previously raised in lawsuits. So, while litigation seems inevitable, and worker advocacy groups already are threatening litigation over the final rule less than one day after its release, employers should not be idle in preparing for this rule to take effect.

### **Avoiding The Last-Minute Panic**

It might feel like déjà vu, but it is imperative to confirm your prior findings. Your workplace, or a specific employee's *work*, might have changed in the interim – and increasing the salary for an employee that does not meet the duties tests can only make matters worse.

The best advice is to start evaluating not just whether changes will be necessary, but how best to make those changes (timing, communications, etc.). Right now, you should be:

- Analyzing whether the FLSA exemptions you have been relying upon will still apply;
- Considering the possible application of alternative FLSA exemptions; and
- Developing FLSA-compliant pay plans for employees you intend to re-classify to overtime eligible (non-exempt).

The USDOL released extensive commentary explaining its rationales for the revised provisions. We are continuing to study the final regulations and accompanying discussion carefully and will offer further considered views. Continue following us here for our latest commentary.

### ***Related People***



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