

U.S. Department of Labor Proposes New Overtime Rule

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On March 7, 2019, after more than two years of speculation, the U.S. Department of Labor (“DOL”) finally proposed its new overtime rule. Under the proposed rule, the minimum salary a worker would have to be paid to qualify for the executive, administrative and professional exemptions would increase from \$26,660 (or \$455 per week) to \$35,308 (or \$679 per week). The DOL estimates that 1.1 million more employees will be eligible for overtime under the proposed rule.

The current salary threshold has been set at its current level since 2004. In May 2016, the Obama DOL issued a final rule increasing the salary threshold to \$47,476 as of December 1, 2016. (Foley Hoag’s alert on that rule can be found [here](#).) But shortly before the rule was to go into effect, a federal judge in Texas issued a nationwide injunction blocking the implementation of the rule. (Foley Hoag’s alert on the judge’s decision can be found [here](#).) The rule was subsequently invalidated, giving the Trump DOL the opportunity to propose a new rule.

In addition to increasing the salary threshold, the new proposed rule would permit employers to count non-discretionary bonuses and incentive payments (including commissions) paid to employees to satisfy up to 10 percent of the salary threshold. In other words, an employee who makes \$32,500 in base salary but also receives a bonus of \$3,000 would be exempt. The proposed rule also modifies the “highly compensated employee” exemption, increasing the annual compensation threshold for that exemption from \$100,000 to \$147,414.

There will be a 60-day notice and comment period once the proposed rule is published in the Federal Register, and it is currently estimated that the rule will take effect in January 2020. Foley Hoag will continue to monitor developments and provide updates.

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