

# Exempt Status in Jeopardy: FLSA Salary Requirements Skyrocket

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Practice Area: Labor and Employment

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The Department of Labor ("DOL") has issued proposed revisions to the Fair Labor Standards Act ("FLSA") regulations that drastically increase the minimum salary requirement for exempt employees. Currently, an overtime-exempt employee must earn \$455 per week (\$23,660 per year). Under the proposed revised regulations, an exempt employee must earn at least \$970 per week (\$50,440 per year). The proposed revisions also would increase the minimum annual compensation requirement for "highly compensated employees" from \$100,000 to \$122,148 per year. Additionally, the proposed revised regulations would create a mechanism to automatically update minimum salary and compensation levels either in coordination with a fixed percentile of earnings or changes in the Consumer Price Index for Urban Consumers.

## When Can I Expect This Change?

We do not expect that any proposed revised regulation will become effective until mid-2016. Once the proposed regulations are published in the Federal Register, a 60-day comment period will begin. Once the comment period is closed, the DOL will review the comments and might make further revisions to the regulations. Once revisions are completed, the DOL will publish its "final rule" with an effective date on which it becomes law. It is possible, but unlikely, that the final rule will differ substantially from the proposed rule that has been issued.

## Why the Change?

The DOL estimates that 85% of all white collar employees currently classified as overtime-exempt pass the salary test but fail the duties test and should not be exempt. Thus, the DOL has decided to increase the objective salary requirements in an effort to more strictly apply overtime exemptions.

Additionally, the DOL might revise the "duties tests" associated with various exemptions, such as how one exercises independent business judgment and discretion. The DOL also might consider adding additional job classes for potential exempt status. The DOL has not issued any proposed revisions or given any indication as to what these changes might be. Instead, the DOL has opened up a comment period, which usually lasts 60 days. You may contact the DOL for comment at [www.regulations.gov](http://www.regulations.gov) and select Rule Identification Number (RIN) 1235-AA11.

## What Do I Do Now?

As previously stated, it is unlikely that final regulations changing the salary requirement will be issued and effective until mid-2016. In the meantime, employers should:

- Audit the workloads of their exempt employees to gauge whether they will incur significant overtime costs;
- Review exempt job descriptions for accuracy regarding duties performed and discretion used;
- Consider whether current exempt positions are accurately classified; and
- Consider the cost of additional full-time or part-time employees to avoid excessive overtime for reclassified positions.

Fortunately, the DOL has given plenty of lead time before finalizing and implementing this change to the salary requirement for exempt employees. Employers should consider the above recommendations so that they are prepared.

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