# DOL Proposes New Rule to Increase Overtime Salary Threshold

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On August 30, 2023 the Department of Labor (DOL) announced a proposed rule to increase the Fair Labor Standards Act's (FLSA's) annual salary-level threshold for the executive, administrative, and professional overtime exemptions (commonly referred to as the "white-collar" exemptions). The current salary threshold for the white-collar exemptions is $684 per week, roughly $35,568 per year. The proposed rule would increase that threshold to $1,059 per week, roughly $55,000 per year.

The new rule also proposes an increase in the highly compensated employee exemption threshold from the current $107,432 up to $143,988.

The proposed rule includes regulations that would institute an automatic increase in the thresholds every three years based on U.S. income data.

These proposed threshold increases would be specific to the FLSA's white-collar exemptions, including certain computer employees who are paid on a salary basis. Under the white-collar exemptions, employees who perform certain duties and who make above the threshold amount are exempt from minimum wage and overtime requirements. The proposed rule does not impact the current duties test, but the increased salary thresholds would reduce the number of employees eligible for the exemption. The DOL estimates the new rule, if implemented, would expand overtime eligibility to 3.6 million workers.

**Longevity of the FLSA salary requirements?**

While the DOL proposes increasing these salary thresholds, a question lingers as to the ongoing vitality of this requirement. Notably, Supreme Court Justice Brett Kavanaugh recently questioned the legal basis for the salary regulations under the FLSA. In *Helix Energy Sols. Group, Inc. v. Hewitt*, the U.S. Supreme Court held that an oil field worker who was paid a daily rate and earned over $200,000 per year was not exempt from the FLSA's overtime pay requirements. While the opinion focused mostly on whether a day rate satisfied the salary-basis test of the white-collar exemptions, Justice Kavanaugh's dissent highlights how the proposed rule and the regulations' salary requirements might be challenged by its opponents. In Justice Kavanaugh's dissent, he specifically questioned whether salary-level or salary-basis requirements, which are established by DOL regulations, are valid under the statutory text of the FLSA. "[I]t is questionable," Justice Kavanaugh noted, "whether the Department's regulations — which look not only at an employee's duties but also at how much an employee is paid and how an employee is paid — will survive if and when the regulations are challenged as inconsistent with the [FLSA]." 598 U.S. 39, 64 (2023). We anticipate opponents of the proposed rule and litigants faced with salary-level and salary-basis hurdles will use Judge Kavanaugh's dissent as a road map to challenge these regulations in court.

**Takeaway**

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The proposed rule has yet to be published in the Federal Register. Once published, the DOL will provide the public with an opportunity to comment for 60 days. If finalized, the new rule would broaden who is entitled to overtime pay. We also, however, anticipate challenges to the proposed rule and FLSA salary regulations. While these play out, we would recommend that employers begin analyzing the proposed rule's potential impact on their exempt employees and how any impact will affect their payroll budgeting.

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