

# New overtime salary threshold: First steps and reactions

The Department of Labor's proposal to raise the overtime salary threshold to \$35,308 per year probably won't take effect until at least Jan. 1, 2020. Employers should start planning now how they will respond.

For many employers, the new rule will mean many relatively low-paid exempt employees will be eligible for overtime pay when they work more than 40 hours in a workweek. There are two ways to minimize the impact:

**Give raises to affected employees** so their salaries are higher than the proposed threshold. Those employees could then work more than 40 hours per week without triggering an overtime pay obligation. For employees whose annual earnings are already close to \$35,308, this makes sense.

**Crack down on overtime** so exempt, overtime-eligible employees never work more than 40 hours per week. This may be easier said than done if unwritten rules set expectations that staff will perform some work after hours and on weekends. Remember, employers must always pay time-and-a-half for overtime work, even if the overtime was unauthorized.

Start strategizing how to respond by identifying who on your staff would be affected by the new salary threshold rule.

1. First make a list of all employees with administrative, executive and professional exemptions under the Fair Labor Standards Act. Rank order the list according to their annual salaries.
2. Draw a cut-off line at \$35,308. Everyone at or under the line will be eligible for overtime under the new rule.

## Muted reaction to DOL's overtime salary threshold proposed rule

In 2016, when the Obama administration formally proposed more than doubling the white-collar overtime salary threshold from \$23,660 to \$47,476 per year, business interests and employment lawyers howled. What a difference a few years makes.

Reaction to the Department of Labor's March 7 announcement of a 50% increase in the salary threshold—to \$35,308—has been far less apoplectic. Many focused on the practical details. What people are saying:

- "At my confirmation hearings, I committed to an update of the 2004 overtime threshold and today's proposal would bring common sense, consistency, and higher wages to working Americans."—*Labor Secretary Alexander Acosta*
- "The Trump administration is proposing a responsible increase to the salary threshold for overtime pay."—*Sen. Lamar Alexander (R.-Tenn.), chair, U.S. Senate Labor Committee*
- "There hasn't been an adjustment to the threshold since 2004, which is too long."—*Paul Williams, vice president at Argentum, an association of senior living providers*
- "The Labor Department is intent on completing the rulemaking by the end of 2019, and this is doable even if an additional 30 days were added to the comment period."—*Attorney Alfred B. Robinson, Jr.,*

*Ogletree Deakins, Washington, D.C.*

- “Many twists and turns might occur before this proposed rule is finalized. Do not run out tomorrow and make changes to your compensation structure based on what is simply a proposal. Instead, use this time to start evaluating what 2020 might look like for your compensation system if the USDOL’s proposal comes to fruition in its current form.”—*Attorney Marty Heller, Fisher Phillips, Atlanta*