

Salary threshold for exempt overtime is likely to increase

On May 5th, the Department of Labor recently hosted a listening session on how much salary employees must earn to be exempt from the Fair Labor Standards Act and if that amount might change.

The DOL is holding regional listening sessions and this one was focused on employees and employee advocates from the Southeast. So, yes, the points of view expressed were from the employee side of the ledger. But take heart. There are several employer-focused listening sessions scheduled and you can register for them [here](#); starting times vary. We'll be listening in on the May 17 session.

What we heard from employees

The DOL gave nothing away and stressed they were there to listen, which they did. The session began with Seema Nanda, the Labor Department Solicitor, asking this question: What do people want revised regulations to do? She noted the DOL wasn't seeking a collective consensus at this time.

Patrick Oakford, principal deputy assistant secretary for policy, framed the session with these questions:

- What is the appropriate salary level for the white-collar exemptions?
- What are the costs and benefits of increasing the salary level for employers and employees, including increasing wages and reducing litigation costs?
- What is the best methodology for updating the salary level and how often should the salary level be updated?
- What other changes to the overtime regulations are warranted?

After Nanda and Oakford's introductions, the session began. The format consisted of participants reading prepared statements about their work experiences. To respect everyone's privacy, we are not going to recount those stories, participants' names, or the companies they work for. We are going to recount their suggestions to the DOL.

In general, participants were middle managers who earned between \$40,000 and \$50,00 a year. They said they're working longer hours these days, earning less than their nonexempt direct reports, and can't handle today's higher costs of living.

All of them want the salary level raised. How much they wanted it raised varied, with around \$50,000 being the most popular amount. One participant said \$70,000 should be the starting point and it should be indexed to account for inflation.

Some participants, whose direct reports earn more than they do, also want to be paid overtime or as one participant said, to be paid for all hours worked. They also say they're required to check their phones at all hours and to work weekend events. This may hint at a revamp of the duties tests written into the FLSA's executive, administrative, and professional exemptions.

What we heard from employers

Two participants spoke up for employers.

One participant wants more help for employers. Employers, she said, want to properly classify their employees, but struggle with the duties tests.

The second participant wants the DOL to abandon or at least delay the entire project. Noting supply-chain and other issues, this person said employers can't afford to take another hit and they're stretched thin as it is.