

Important questions and answers about the new overtime rule

Last month's much-anticipated overhaul of the salary threshold that determines when administrative, executive and professional employees are eligible for overtime pay means employers must now consider potential changes to their compensation plans. Here are some key Q&As from a new DOL fact sheet on the proposed changes:

Q. Who would be exempt from overtime under this proposal?

A. To qualify for an overtime exemption, an employee would generally have to meet these three requirements:

- Be salaried, meaning that he or she is paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the salary basis test).
- Be paid a specified weekly salary threshold (the salary level test) of at least \$679 per week (\$35,308 per year). The current threshold is \$455 per week (\$23,660 per year).
- Primarily perform executive, administrative or professional duties, as provided in the DOL regulations (the duties test).

Q. How many employees will be affected by the new rule?

A. In the first year after implementation, the DOL estimates that 1.1 million currently exempt employees who earn at least \$455 per week but less than the proposed standard salary level of \$679 per week could become eligible for overtime.

Q. How did the DOL arrive at the proposed \$35k threshold?

A. The DOL calculated the standard salary amount by applying the same method used to set the standard salary level in 2004—i.e., by looking at the 20th percentile of earnings of full-time salaried workers in the lowest-wage census region (then and now the South), and/or in the retail sector nationwide. The methodology used to set the standard salary level in 2004 has withstood the test of time, is familiar to employees and employers, and can be used without causing significant hardship or disruption to employers.

Q. Under the proposed rule, may employers use bonuses to satisfy part of the new standard salary level test?

A. The DOL proposes to allow non-discretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10% of the standard salary test requirement.

Such bonuses include, for example, non-discretionary incentive bonuses tied to productivity and profitability. The DOL is inviting comment about whether the 10% cap on bonuses is appropriate, or whether a higher or lower cap would be preferable.

Remember, the new rule on the overtime threshold for white-collar employees is not yet final.

May 21, 2019 Right now, this is merely a proposed rule. It could change, based on public comments received on or before May 21, 2019. Submit your comments and concerns at www.regulations.gov/document?D=WHD-2019-0001-0001. You can read the official version of the rule there.

Jan. 1, 2020 This is the target date the DOL has set for the rule to take effect. It may or may not meet that goal, depending on the comments received from the public.