



DOL Should Modify and Finalize New Overtime Rule

The U.S. Department of Labor should issue a final rule implementing its recent proposed changes to the Fair Labor Standard Act's overtime pay requirements, which contain a sensible update to the salary threshold for the "white-collar" exemptions. The existing threshold is over 14 years old. The Department should also prorate the salary threshold for part-time employees and allow the cost of employer-provided room and board to count toward the salary threshold.

The Issue

The Fair Labor Standards Act (FLSA), enacted in 1938, requires employers to pay their employees at least a minimum hourly wage, which is set by the statute, and an "overtime" rate of 1.5 times the employee's regular hourly wage for every hour the employee works over 40 hours in a given week. The statute exempts certain categories of employees from these requirements, including executive, administrative and professional employees (sometimes referred to the "eap" or "white collar" exemption). The FLSA tasks the Department of Labor (DOL) with defining executive, administrative and professional employees by regulation and requires the Department to revisit these definitions from "time to time." Under current regulations, these "white collar" employees are exempt from the FLSA's overtime and wage requirements if they are paid a salary (salary basis test) of at least \$455 per week or \$23,660 annually (minimum salary requirement), and primarily perform responsibilities that DOL considers customary of professional, executive and administrative work (duties test). The minimum salary requirement was last updated in 2004.

On June 30, 2015, DOL proposed increasing the overtime threshold to \$50,440 per year, a 113 percent increase that would have occurred all at once in 2016 and in all areas of the country regardless of significant regional economic differences. DOL also proposed automatic annual increases to the salary threshold by tying it to one of two indexes (this is the first time since the FLSA was signed into law in 1938 that an automatic threshold increase would be imposed by DOL).

DOL's proposal was met with widespread concern from colleges and universities across the country and the associations that represent them that submitted comments and economic analysis, wrote letters to Congress, and met with administration officials to advocate for positive changes that would lessen the negative impact of the many unintended consequences associated with the proposed rule.

Despite our concerns, on May 18, 2016, DOL issued a final rule increasing the salary threshold from \$23,660 to \$47,476 — a 100 percent increase and only slightly less than its original proposal. The new rule would have also required automatic updates to the



threshold every three years. The final rule would have required mass reclassification of professionals in thousands of positions at institutions of higher education that clearly meet the duties test for exemptions but are paid less than \$47,476.

On November 22, 2016, a federal court in Texas temporarily enjoined DOL from enforcing the new regulation.¹ In response, DOL issued a [Request for Information](#) (RFI) on June 26, 2017, seeking comment about how DOL should go about updating the overtime regulations in light of the court's ruling.

On September 25, 2017, CUPA-HR, in partnership with 20 other higher education associations, filed [substantive comments](#) on the RFI. These comments highlighted our belief that an increase to the salary threshold is due and outlined what we believe to be DOL's best course of action moving forward.

DOL [announced](#) a new proposed rule on March 7, 2019, which would raise the salary threshold from its current level of \$455 per week or \$23,660 annually to \$679 per week or \$35,308 annually. The proposal does not include any automatic updates but asks for comments on whether it should codify into law language that would require DOL to update the salary threshold via notice-and-comment rulemaking every four years.

The Solution

We believe DOL should move forward with its proposed update to the salary threshold, but also prorate the salary threshold for part-time employees and allow the cost of employer-provided room and board to count toward the salary threshold. We also believe DOL should consider extending the intervals between updates via rulemaking to five to seven years, which is in line with pre-1970s historic norms.

We urge you to contact DOL and support these commonsense changes.

About CUPA-HR

CUPA-HR serves as the voice of human resources in higher education, representing more than 30,000 human resources professionals and other campus leaders at more than 2,000 colleges and universities across the country, including 93 percent of all U.S. doctoral institutions, 78 percent of all master's institutions, 53 percent of all bachelor's institutions and over 500 two-year and specialized institutions. Higher education employs over 3.9 million workers nationwide, with colleges and universities in all 50 states.

¹ The court [issued](#) a decision permanently enjoining the rule on September 1, 2017.