

Lead Report

Wage & Hour

DOL Issues Final Overtime Rule Doubling Exemption Threshold to \$47,476

The Labor Department's final overtime rule will double the salary threshold for overtime exemption, effective Dec. 1, while updating it every three years thereafter, the administration announced May 17.

Published May 18, the new salary test—\$47,476 per year, or \$913 per week—will be based on the 40th percentile of full-time salaried workers in the South, the lowest-income Census region.

This marks a key revision from the 2015 proposed rule, which called for annual updates based on national earnings.

Currently, workers earning more than \$23,660 per year are not eligible for time-and-a-half pay for hours beyond 40 in a week if they also perform certain executive, professional or administrative duties. The new rule leaves intact the current duties test.

The regulation's Dec. 1 effective date, more than six months after its release, is revised from a 60-day period that DOL officials called for earlier this year.

In another change, which was first confirmed in April (62 CLR 264, 5/5/16), the threshold is slightly reduced from \$50,440 as initially proposed. These revisions reflected concerns from the public comments, Labor Secretary Thomas Perez said in a press call.

The new salary level of \$47,476 is projected to rise to more than \$51,000, based on wage growth, with the first scheduled update on Jan. 1, 2020, the administration said in a fact sheet.

The DOL also estimated that 4.2 million people currently exempted from overtime pay when working more than 40 hours per week will see the benefits of the regulation.

The rule, which the president in a 2014 memorandum directed the DOL to address, is a landmark piece of the administration's middle-class agenda. The full regulation was posted on the Federal Register's public inspection website the morning of May 18.

"The 40-hour week and basic overtime protection were the pillars in that basic bargain," from the 1930s when the Fair Labor Standards Act became law, Vice President Joe Biden said in the call. "But for the past 40 years overtime protections have been increasingly weakened."

He added that the share of workers who automatically qualified for time-and-a-half pay has dropped to 7 percent today from 62 percent in 1975.

Several Mysteries Solved. While the threshold was widely expected to rise substantially in the final version, there were several unknown provisions that the administration has now unveiled:

- The absence of a bright-line duties test comes as a major relief to various employer groups. "The business

community overwhelmingly said do not touch the duties test, so we didn't," Perez said. The agency in 2015 did not propose such a change, but it posed questions for comment, including whether the DOL should adopt a quantitative test that an employee spend at least 50 percent of his or her working time performing exempt job duties to be deemed ineligible for overtime pay.

- Allowance of bonuses and incentive payments to count for up to 10 percent of the new salary level. This language was suggested as a possibility in the proposal, but not definitively offered. Former DOL Wage and Hour Division Administrator Paul DeCamp, now at Jackson Lewis P.C. in Washington, told Bloomberg BNA recently that the bonus piece is one way the DOL could "throw employers a bone" in the final rule.

- Lifting of the highly compensated employee threshold to \$134,004 from \$100,000. This is the level above which "only a minimal showing is needed to demonstrate an employee is not eligible for overtime," the fact sheet said.

- Clarification on higher education and nonprofit employees. Although the final rule itself will not contain a carve-out for colleges and universities, these entities will be given options to avoid paying overtime under the current FLSA, officials said in the press call. The FLSA already exempts people who teach and colleges "will also be able to use comp time for people who are busy at some times of the year" but not all year, Cecilia Munoz, director of the White House Domestic Policy Council, said. The DOL released guidance May 18 aimed at higher education.

- Perez also announced that a formal non-enforcement policy soon will be announced that relates to organizations that serve people with disabilities. "We will be working very closely with all the chief stakeholders in this because we have to work with the Medicaid funding stream to correct the compensation schemes and you can't do that overnight," the labor secretary said. This responds to a request from the trade group the American Network of Community Options and Resources.

- The DOL also released guidance May 18 targeted at nonprofits.

Rule Divides Workers Versus Business Groups. The regulation has been hailed for years by worker advocacy groups as a long-overdue modernization of outdated FLSA rules.

Democratic lawmakers also appear strongly aligned in support of it, which will be necessary in the face of a Republican-backed legislative challenge.

A coalition of major trade associations representing employers that oppose the rule is lobbying for a bill introduced in March that would block the final rule's implementation. A Congressional Review Act motion of disapproval or an appropriation policy rider has also been under consideration.