



Featured News

ALERT

DOL PROPOSES MAKING MORE EMPLOYEES ELIGIBLE TO RECEIVE OVERTIME PAY

Under the Fair Labor Standards Act, employers are generally required to pay employees a minimum wage for all hours worked, along with overtime of at least one and one-half (1.5) times the employee's regular rate of pay for hours worked in excess of forty (40) hours per week. The broadest exemption to this requirement is for employees who are employed in an executive, administrative, or professional capacity and who are paid a fixed salary of at least \$35,568 annually. An exemption also exists for "highly compensated" employees who perform one or more executive, administrative, or professional duties, and who make at least \$107,432 per year. California's minimum annual salary for exemption from overtime is \$64,480, and the number increases annually. California does not employ the "highly compensated" employee exemption.



On August 30, 2023, the Department of Labor issued a notice of proposed rulemaking. The proposed rule would increase the minimum salary for exemption from overtime rules to \$55,068 per year. [This number is set at the 35th percentile of earnings of full-time salaried workers in the lowest wage region.] Second, the proposed rule would raise the bar for the "highly compensated employee" exemption to \$143,988 per year. [This number is set at the 85th percentile of earnings of full-time salaried workers nationally.] Third, the proposed rule would adjust these threshold amounts every three (3) years in order to maintain the levels at their current respective percentiles of annual earnings in the U.S. (based on the prior four (4) quarters of wage data). The comment period for this proposed rule ends November 7, 2023.

If this rule goes into effect, the DOL estimates that in the first year after implementation, 3.6 million additional workers will become eligible for overtime pay, and \$1.2 billion will transfer from employers to employees. From a legal perspective, the potential number of misclassification and wage and hour claims will increase exponentially. From a practical perspective, it is likely that compensation levels will increase significantly. This may have less of an impact in California, where the minimum salary is still higher than the proposed rule, and where current laws require that employees who work more than twelve (12) hours in a day or in excess of eight (8) hours on a seventh (7th) consecutive work day receive double the regular rate of pay (subject to specified

exceptions).

The FLSA's efforts to substantially increase the minimum salary for overtime exemption in 2016 were blocked by the courts (a smaller increase was approved in 2019); and it is likely that this proposed rule will face similar legal challenges. Higher education groups have already argued that this rule would harm educational institutions that rely on such employees to supply services ancillary to teaching. A similar rule was proposed in May 2022, which never became final.

Because the proposed new federal threshold is still below California's minimum salaried requirement, California employers do not need to take immediate action. Employers should, however, be vigilant regarding the possibility that the California Legislature may follow the DOL's lead in the future and raise the salary floor in California as well.



Author

[Horace W. Green](#)

T 925.944.9700

hgreen@brotherssmithlaw.com

BROTHERS SMITH LLP provides its clients, professional advisors and its friends with up-to-date reports on recent developments in business, real estate, employment, estate planning and taxation.

[Learn More](#)

[Practice Areas](#)

[Professionals](#)

[Publications](#)

[About](#)

[Contact Us](#)

Stay Connected



Primerus
Member


[Email Us](#)

2033 North Main Street, Suite 720
Walnut Creek, California 94596
T 925.944.9700 F 925.944.9701

www.brotherssmithlaw.com

CIRCULAR 230 DISCLOSURE – Pursuant to rules and regulations imposed by the Internal Revenue Service, any tax advice contained in this communication, including any attachments, is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding tax penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another person any transaction or matter addressed herein.

The summary which appears above is reprinted for information purposes only. It is not intended to be and should not



be considered legal advice nor substitute for obtaining legal advice from competent, independent, legal counsel. If you would like to discuss these matters in more detail, please feel free to contact us so that we can provide the clarification and resources you need to make effective decisions.
