



Overtime for White Collar Workers

Overview and Summary of Final Rule

One of the most basic tenets of our economy is that a hard day's work should lead to a fair day's pay. For much of the past century, a cornerstone of that promise has been the idea that you're paid more if you work more than 40 hours in a week. Today, we are taking action that will make that promise a reality again for more of America's workers, too many of whom have been left working long hours for no additional pay, taking them away from their families and civic life without any extra compensation.

It wasn't always this way. The passage of the Fair Labor Standards Act gave most Americans the right to a minimum wage and time-and-a-half pay for more than 40 hours of work in a week. These rules apply to most hourly and salaried workers, but not to some white collar workers whose salaries and duties exempt them from the overtime pay requirement.

The white collar exemption was originally meant for highly-paid workers who had better benefits, job security and opportunities for advancement. Unfortunately, when left unchanged, the salary threshold is eroded by inflation every year. It has only been updated once since the 1970s—in 2004, when it was set too low. As a result, the threshold fails to help employers identify workers who are entitled to overtime pay, and it has left millions without overtime protections to which they should be entitled. This outdated salary threshold provides overtime protections to just 7 percent of full-time salaried workers today based on their pay, compared with 62 percent in 1975. In fact, the white collar exemption salary level set in 2004, \$455 per week or \$23,660 a year—means even workers earning less than the poverty line for a family of four may earn too much to automatically qualify for overtime.

In March 2014, President Obama directed the Secretary of Labor to update the overtime regulations to reflect

once again the intent of the Fair Labor Standards Act, and to simplify and modernize the rules so they're easier for workers and businesses to understand and apply. The Department of Labor conducted months of extensive consultations with employers, workers, unions, and other stakeholders to develop the proposed rule, and it carefully reviewed more than 270,000 comments from the public in order to develop the final rule.

Today, President Obama and Secretary Perez announced that the Department of Labor's final rule will automatically extend overtime pay eligibility to 4.2 million workers. The rule will entitle most salaried white collar workers earning less than \$913 a week (\$47,476 a year) to overtime pay. This long-awaited update will provide a meaningful boost to workers, and it will go a long way toward realizing President Obama's commitment to ensuring every worker is compensated fairly for their hard work.

The final rule will:

- **Put more money into the pockets of many middle class workers—or give them more free time.** By increasing the number of workers who are eligible for overtime when they work more than 40 hours in a week, employers will have a choice. They can either increase their employees' salaries to at least the new salary threshold, pay workers the overtime premium for extra hours, or limit their work to 40 hours in a week.
- **Prevent a future erosion of overtime protections and ensure greater predictability.** The rule will automatically update the salary threshold every three years based on wage growth over time. This means it will work better in the future by continuing to protect the workers it was meant to protect. Employers will be able to adapt more easily because they will

know when the salary updates will happen and how they will be calculated, and they will be able to estimate the amount of the salary update.

- **Strengthen overtime protections for salaried workers already entitled to overtime and provide greater clarity for workers and employers.** Establishing that white collar workers are not entitled to overtime pay involves clearing two hurdles: (1) assessing whether their salary is above the threshold and (2) applying a “duties test” to ensure that they have the kind of job that Congress meant to exclude from overtime protections. With the new, higher threshold, 8.9 million overtime-eligible salaried workers—and their employers—will be able to determine more easily that they should be receiving overtime pay. Because their salaries are below the new threshold, their employers will no longer have to figure out whether they pass the “duties test,” and they will no longer have to wonder if that test has been applied appropriately. This will simplify application of the rules and provide a bright line that protects the set of workers our workplace laws intended to protect.
- **Improve work-life balance.** Too many salaried, white collar workers today are overworked, and their employers have no incentive to limit hours because they aren’t required to provide additional pay when employees work more hours. Under this rule, employers will have a renewed monetary incentive to support work-life balance. Many workers will put in fewer hours without seeing a reduction in pay, giving them more time to spend with their families and in their personal pursuits.
- **Increase employment by spreading work.** The better work-life balance for workers who will now be eligible for overtime protection may create new opportunities for other workers. Some employers will hire additional workers—or give more hours to part-time workers—to cover work currently done during overtime hours.
- **Improve workers’ health.** Research indicates that working long hours is bad for many workers’ health and increases the risk of injury. Giving workers more downtime can help improve health and prevent injury.
- **Increase productivity.** The rule will promote improved productivity through workers’ improved morale and reduced turnover.

Summary of the final rule:

- **Salary threshold.** The final rule will raise the salary level for the first time since 2004. This increase will go into effect on December 1, 2016.
 - **Standard salary level.** The final rule will raise the standard salary threshold to equal the 40th percentile of weekly earnings for full-time salaried workers in the lowest-wage Census region, currently the South. This will raise it from \$455 a week to \$913 a week (\$47,476 for a full-year worker). This means that 35 percent of full-time salaried workers will be automatically entitled to overtime, based solely on their salary.
 - **Highly Compensated Employees (HCE) salary level.** The rule also updates the total annual compensation level above which most white collar workers will be ineligible for overtime. The final rule raises this level to the 90th percentile of full-time salaried workers nationally, or from the current \$100,000 to \$134,004 a year.
- **Automatic updates.** Every year that the threshold remains unchanged, it covers fewer and fewer workers as wages overall increase over time. The Department’s final rule will fix this by automatically updating the salary threshold every three years, beginning January 1, 2020. Each update will raise the standard threshold to the 40th percentile of full-time salaried workers in the lowest-wage Census region, estimated to be \$51,168 in 2020. The HCE threshold will increase to the 90th percentile of full-time salaried workers nationally, estimated to be \$147,524 in 2020. The Department will post new salary levels 150 days in advance of their effective date, beginning August 1, 2019.
- **Bonuses, incentive payments, and commissions.** The final rule will allow up to 10 percent of the salary threshold for non-HCE employees to be met by non-discretionary bonuses, incentive pay, or commissions, provided these payments are made on at least a quarterly basis. This recognizes the importance these forms of pay have in many companies’ compensation arrangements, particularly for managerial employees affected by the final rule. This is a new policy that responds to robust comments received from the business community on this matter.

- **Duties test.** The final rule does not make any changes to the “duties test” that determines whether white collar salaried workers earning more than the salary threshold are ineligible for overtime pay. But fewer employers and workers will have to worry about its application because the higher salary threshold means more workers’ entitlement to overtime pay will be clear just from their salaries. For workers with salaries above the updated salary level, employers will continue to use the same duties test to determine whether or not the worker is entitled to overtime pay.

Impacts of the rule:

- **Workers directly affected.** 4.2 million salaried workers will be affected by this rule based on their salaries. These workers are currently ineligible for overtime. The Department estimates that most of them (4.1 million) will become eligible for overtime when they work more than 40 hours (i.e., they will be converted to overtime-eligible status), while others (100,000) will receive a raise so that their salary is above the new threshold.
 - o Most of these workers will be affected by the standard salary level. However, 65,000 will be affected due to the HCE level alone; of those, 64,000 will become newly eligible for overtime while 1,000 will remain exempt because their employers are expected to raise their salaries above the new HCE threshold.
- **Workers indirectly affected.** 8.9 million salaried workers (3.2 million blue collar and 5.7 million white collar workers) are currently eligible for overtime because, although their salaries are above the current salary threshold, their duties do not meet the exemption for executive, administrative, or profession-

al workers. Under the final rule, their eligibility for overtime will become clearer because their salaries will fall below the new threshold—and no assessment of their duties will be necessary. Of the 5.7 million white collar workers, approximately 732,000 are overtime-eligible, but their employers don’t recognize them as such and so do not pay them the overtime they deserve when they work more than 40 hours. This update will give all of these workers the peace of mind in knowing they are properly classified as eligible for overtime.

- **More income for working Americans.** As a result of this rule, an extra \$1.2 billion a year will go into workers’ pockets (those earning between \$455 and \$913 a week). These benefits will flow to many middle class workers and their families.
 - o More than half (56 percent) of affected workers are women.
 - o 61 percent are age 35 or older.
 - o 82 percent have at least some college, and more than half (53 percent) have a college degree or more.
 - o In addition, 2.5 million children have at least one parent who will gain overtime protections or get a salary raise.
- **More appropriate salary threshold.** While the current threshold (\$455) is less than the poverty level for a family of four and just 1.6 times the federal minimum wage, the new standard salary is much more appropriately set. It will be 3.1 times the federal minimum wage for a full-time worker and twice the poverty level for a family of four.

For more information on the Overtime Final Rule, see www.dol.gov/overtime.