

BLOGS

Department of Labor

3.6 Million Reasons Employers Should Monitor the DOL's Proposed Overtime Rule

On August 30, 2023, the U.S. Department of Labor ("DOL") announced a proposed rule intended to "restore and extend overtime protections to 3.6 million salaried employees." If finalized, the proposed rule would raise the salary levels that must be paid to certain employees for them to be exempt from overtime pay requirements under the federal Fair Labor Standards Act ("FLSA"). The full Lathrop GPM Client Alert on the subject can be found [here](#).

Specifics of Proposed Rule

The proposed rule, if finalized, would raise the guaranteed weekly salary that must be paid to "white collar" exempt employees who meet the executive, professional or administrative duties test, requiring a guaranteed gross weekly salary of at least \$1,059 per week. This equates to \$55,068 gross annual salary per year and would be a sharp increase from the current "white collar" weekly salary threshold of \$684 per week (which is \$35,568 a year). Additionally, these salary thresholds would automatically increase every three years to the 35th percentile of weekly earnings of full-time non-hourly employees in the lowest-wage Census Region.

The proposed rule would also increase the annual gross salary threshold for the "highly compensated employee" exemption from \$107,432 per year to \$143,988 per year. The "highly compensated employees" exemption would automatically increase every three years to the 85th percentile of full-time non-hourly employees nationally.

What's Next

Once published, the proposed rule will be open for public comment for 60 days. The DOL will then consider all comments before publishing a final rule.

The proposed rule is expected to become final around the end of 2023 and is expected to be challenged by business groups and states alike.

Nevertheless, employers should consider analyzing how the rule, under their current scheduling practices and salaries, would affect them and explore any necessary changes to either or both to ensure sustainability and profitability under the new requirements, should the proposed rule not be struck down. Options for addressing the new rule, should it become final, include raising salaries as needed

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to keep employees exempt from overtime pay requirements or converting employees to non-exempt employees entitled to overtime pay. There are a variety of factors that might make one of these options better than the other and employers are encouraged to consult their legal counsel.