

Law & Policy Group

# Roundup: Employer resources on DOL's proposed expansion of overtime protections

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## Section 1

# Introduction

The Department of Labor (DOL) announced on Aug. 30, 2023, a proposed rule that would significantly expand overtime protections — guaranteeing overtime pay for most salaried workers earning less than \$1,059 per week, or about \$55,000 per year (up from \$35,568 per year). The rule is controversial and will likely undergo revisions prior to being finalized. An Obama-era overtime rule was blocked in 2017 by a federal trial court, and business groups will also likely challenge this rule if finalized.

To provide employers with some information about the proposed rules and the varying aspects and issues to consider, this roundup provides links to government information, third-party analyses, news articles and viewpoints. The aggregated content in each section is organized in reverse chronological order and is by no means comprehensive. The content also does not necessarily reflect Mercer's or the authors' point of view on the subject.

## Section 2

# Highlights of the proposal

The DOL announced on Aug. 30, 2023, a proposed rule that would significantly expand overtime protections — guaranteeing overtime pay for most salaried workers earning less than \$1,059 per week, or about \$55,000 per year (up from \$35,568 per year). The proposal was published in the Federal Register on Sept. 8, 2023, and the comment period ended Nov. 7, 2023. The final rule is expected in April 2024. The proposal would:

- Restore and extend overtime protections to low-paid salaried workers. The proposed rule would increase the salary threshold to about \$55,000, which the DOL says would affect 3.6 million salaried workers. The exact amount will be based upon the 35th percentile of full-time salaried workers in the lowest-wage census region (currently the South), using data available at the time of the final rule. A footnote in the proposal states that the amount could be as much as \$60,209 in the final rule, which has reportedly caused concern in the business community.
- Increase the minimum salary level for an employee to qualify as exempt under the “highly compensated employee” exemption to \$143,988 per year or more (up from \$107,432 per year). This amount could also increase because it is based on data available at the time of the final rule.
- Clarify which employees are executive, administrative or professional employees who should be overtime exempt. By doing so, the proposed rule would better ensure that those who are not exempt will gain more time with their families or receive additional compensation when working more than 40 hours a week.
- Automatically update the salary threshold every three years to reflect current earnings data. The aim is to prevent the future erosion of overtime protections and ensure greater predictability.
- Restore overtime protections for U.S. territories. From 2004 until 2019, the DOL’s regulations ensured that for U.S. territories where the federal minimum wage was applicable, so too was the overtime salary threshold.

There are no proposed changes to the duties test “at this time.”

Here are FAQs on the proposed rule.

## Section 3

# Law firm analyses

- [New overtime rules in 2024? Employers eagerly await final rule from DOL](#) (Sandberg Phoenix, Dec. 27, 2023)
- [DOL aims for April 2024 release of white-collar exemption final rule](#) (Jackson Lewis, Dec. 12, 2023)
- [Biden's DOL overtime proposal draws business gripes](#) (Littler, Nov. 13, 2023)
- [DOL's proposal to expand overtime eligibility offers unique opportunity to employers](#) (Brownstein, Sept. 28, 2023)
- [Millions more may be eligible for overtime under DOL's proposed rule](#) (Buchanan, Sept. 25, 2023)
- [New proposed DOL rule may mean more workers receive overtime pay](#) (Venable, Sept. 19, 2023)
- [Significant changes to US overtime pay requirements on the horizon](#) (Baker McKenzie, Sept. 18, 2023)
- [Proposed overtime rule: What employers need to know](#) (Brown Winick, Sept. 18, 2023)
- [New proposed overtime regulation is wrong rulemaking at wrong time](#) (US Chamber of Commerce, Sept. 14, 2023)
- [Changes may be coming to white-collar exemption salary thresholds](#) (Mintz, Sept. 11, 2023)
- [DOL proposes significantly raising minimum salary for white-collar overtime exemptions](#) (Maynard Nexsen, Sept. 11, 2023)
- [DOL seeks to change exempt salary threshold](#) (Foley, Sept. 11, 2023)
- [Labor Department proposes increasing salary threshold for overtime pay](#) (Greenberg Traurig, Sept. 6, 2023)
- [Labor Department proposes raising white collar overtime salary threshold to \\$55,000](#) (Holland & Knight, Sept. 5, 2023)
- [Client Alert: Not again! DOL proposes to increase salary threshold levels for overtime exemptions for the third time in eight years](#) (Shumaker, Sept. 5, 2023)
- [DOL proposes major expansion of workers' overtime eligibility](#) (Pierce Atwood, Sept. 5, 2023)
- [DOL proposed white-collar exemption rule sets minimum salary over \\$55K](#) (Jackson Lewis, Sept. 4, 2023)
- [DOL proposes substantial increase to salary threshold for FLSA's white collar exemptions](#) (Ogletree Deakins, Sept. 1, 2023)

- [DOL's new proposed overtime rule would drastically increase the salary threshold for the white collar exemption](#) (Ford Harrison, Sept. 1, 2023)
- [Department of Labor proposes raising salary level for FLSA 'white collar' exemptions to \\$55,068](#) (Morgan Lewis, Sept. 1, 2023)
- [Department of Labor puts forth new rule to expand overtime eligibility to millions of US workers](#) (Kilpatrick Townsend, Sept. 1, 2023)
- [Department of Labor introduces new proposal to revise salary threshold](#) (Troutman Pepper, Sept. 1, 2023)
- [US Department of Labor announces proposed rule to extend overtime protections](#) (Spencer Fane, Aug. 31, 2023)
- [DOL working overtime to increase salary exemption threshold](#) (Snell & Wilmer, Aug. 31, 2023)
- [DOL delivers a proposed salary bump to FLSA overtime thresholds for Labor Day](#) (Seyfarth, Aug. 31, 2023)
- [US Department of Labor proposes nearly 55 percent increase in the salary threshold for white collar exemptions with automatic increases](#) (Reed Smith, Aug. 31, 2023)
- [Will the FLSA regulations for exempt employees apply to Puerto Rico operations](#) (Littler, Aug. 31, 2023)
- [5 things employers should know about the DOL's proposed new overtime rules](#) (Clark Hill, Aug. 31, 2023)
- [Time OT! DOL proposes significant updates to overtime rules...again](#) (Squire Patton Boggs, Aug. 30, 2023)
- [DOL proposes to significantly increase the minimum salary to qualify for the 'white collar' overtime exemptions](#) (Littler, Aug. 30, 2023)

## Section 4

# News and viewpoints

- [DOL overtime rule under White House review, nears release](#) (subscription required) (Bloomberg Law, March 4, 2024)
- [Playbook for 2024: New overtime pay rule would expand access to millions](#) (The Business Journals, Jan. 29, 2024)
- [Punching in: Biden's DOL overtime proposal draws business gripes](#) (subscription required) (Bloomberg law, Nov. 13, 2023)
- [Colleges predict tuition increases, layoffs under proposed overtime rule](#) (Inside Higher Ed, Nov. 13, 2023)
- [New proposed overtime regulation is wrong rulemaking at wrong time](#) (US Chamber of Commerce, Sept. 14, 2023)
- [Department of Labor oversteps authority with salary rule](#) (subscription required) (Bloomberg Law, Sept. 13, 2023)
- [Punching in: Overtime proposal provisions you may have missed](#) (subscription required) (Bloomberg Tax, Sept. 11, 2023)
- [The Biden administration wants anyone who makes under \\$55,000 to get paid overtime](#) (Fortune, Aug. 30, 2023)
- [Overtime would become available to millions more employees under proposed rule](#) (subscription required) (SHRM, Aug. 30, 2023)
- [3 million more US workers could qualify for overtime under Biden proposal](#) (Forbes, Aug. 30, 2023)
- [DOL proposes \\$55K overtime rule threshold, automatic 3-year updates](#) (HR Dive, Aug. 30, 2023)
- [Labor Dept. proposes vast expansion of overtime eligibility](#) (subscription required) (The New York Times, Aug. 30, 2023)



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