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## Federal DOL Proposes Salary Increase For White Collar Overtime Exemptions

### How does the proposed rule impact California employers

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The United States Department of Labor (DOL) announced a proposed rule that would increase the minimum salary required to qualify as exempt from overtime under the federal Fair Labor Standards Act's white collar exemptions (executive, administrative, and professional employees).

The proposed increase would raise the minimum annual salary for exempt status from \$23,360 to \$35,308 (an increase in the weekly rate from \$455 to \$679). This is a much smaller increase than the increase that had been adopted by the Obama administration DOL in 2016. That increase would have raised the minimum salary for exempt status to \$47,476 per year, but a court blocked that increase from taking effect.

In addition to increasing the minimum salary to qualify for exempt status under the white collar exemptions, the proposed rule also would substantially increase the minimum annual compensation to qualify for the FLSA's "highly compensated employee" exemption, from \$100,000 to \$147,414 (of which, at least \$679 per week must be paid on a guaranteed salary or fee basis).

The rule sets some special minimum compensation rates for employees in the motion picture industry and employees in Puerto Rico, Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

In addition to raising the minimum salary to qualify for exempt status under federal law, the proposed rule is also significant in that it would allow non-discretionary bonuses and incentive compensation to be used to satisfy up to 10% of the salary level. Additionally, employers would have one catch-up period at the end of a 52-week period to make up any shortfall in the employee's salary to bring it up to the required minimum.

In other words, the employer could pay the employee a guaranteed minimum salary of \$611.10 per week (90 percent of the new minimum weekly salary), with the thinking that the employee's non-discretionary bonuses and incentive compensation would bring the employee's total annual salary to at least \$35,308. If the bonus and incentive compensation fell short of meeting the minimum salary, the employer would have one chance to make up the difference.

Proposed rule does not include any changes to the "duties tests" to qualify for exempt status, nor does it provide for additional automatic periodic increases to the minimum salary level. However, the proposed rule calls for the DOL to "review" the salary level every 4 years to consider whether an adjustment is needed.

The public will have 60 days to submit comments on the proposed rule, which ultimately is expected to take effect January 1, 2020.

California employers are reminded that they have to comply not only with the FLSA's minimum salary for exempt status, but also with California law, which has a higher minimum salary requirement for white collar exempt status (\$49,920 for employers with 26 or more employees).

Additionally, California does not have a highly compensated employee exemption. Finally, California does not have any provision allowing bonuses and incentive compensation to be counted in determining whether an employee's salary meets the minimum salary threshold for exempt status. Thus, the newly proposed DOL rule primarily will impact employers with multi-state operations and employees in states other than California.

*This article originally appeared [here](#).*

## Author Bio



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