

Caps Off to You: DOL Proposes Raising Salary Cap

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TECHNOLOGY & TELECOMMUNICATIONS | APRIL 1, 2019

In 2014, the Obama administration proposed raising the minimum salary threshold for exempt white-collar workers to \$47,476 per year—nearly double the current salary level. The Obama administration's rule, which was intended to adjust the threshold to account for years of inflation, would have cost employers millions. But it was never approved. The salary threshold has continued to hold steady at \$23,600 per year.

Fast forward to 2019, and the Trump administration has proposed a new rule. Currently in the comment period, the proposed rule would raise the standard salary level to \$35,000. It includes other proposed changes as well:

- 1. The standard salary level would increase to \$35,000/year (\$673/week).**
 - Currently \$23,600/year (\$455/week).
 - The Obama administration rule would have increased to \$47,476/year (\$913/week).
- 2. The salary level for highly compensated individuals (“HCE”) would increase to \$147,414/year (\$2,835/week).**
 - Currently \$100,000/year (\$1,923.07/week).
 - The Obama administration rule would have increased to \$134,004/year (\$2,577/week).
- 3. Employers would be permitted to use incentive compensation (commissions and non-discretionary bonuses) to partially meet the standard salary level requirement.**
 - The incentive compensation limit would be 10 percent of regular salary. This would effectively lower the standard salary level to \$31,500/year (\$606/week), provided the employee received commission or bonuses sufficient to bring total compensation to \$35,000/year.
 - This would apply for standard salary only; it does not apply to HCE.
- 4. There would be no automatic adjustments to the salary threshold.**
 - The proposed rule includes a commitment to periodic review to update the salary threshold. Any update would require notice and comment rulemaking.
 - The Obama administration rule would have increased the salary threshold automatically every three years.
- 5. There would be no changes to the duties test.**

The proposed rule can (and likely will) change before it becomes law. With the comment period slated to close May 21, 2019, what can employers do in the interim? *Now is an excellent time to conduct a wage/hour audit.* Identify employees who will no longer meet the salary level test, if the proposed rule becomes law, and consider strategies for responding to the proposed changes. This might include increasing the salary level for affected employees to retain exempt status, reclassifying employees as non-exempt and OT eligible, adjusting workloads and schedules to avoid OT and shift work to other workers, or hiring more part-time workers. Careful attention should be paid not only to salary, but also to the duties component of any exemption analysis. If the proposed rule becomes law, this time of change provides the opportunity for action to remedy inadvertent employee misclassification.