

USDOL Issues Proposed Regulations to Increase the Salary Level to Qualify for the White Collar Exemptions

On March 7, 2019, the U.S. Department of Labor issued [proposed regulations](#) that would increase the minimum weekly salary to qualify for the Fair Labor Standards Act white collar exemptions from \$455 per week (\$23,660 per year) to \$679 per week (\$35,308 per year). These new proposed regulations are intended to replace the USDOL's 2016 regulations raising the minimum weekly salary to \$913 per week (\$47,476 per year), which were held by the U.S. District Court for the Eastern District of Texas to be [invalid](#) approximately one week before those regulations were set to take effect.

The U.S. Department of Labor came up with the \$679 weekly salary level by using the same methodology that it used when the weekly salary level was increased to \$455 in 2004 -- by setting it at approximately the 20th percentile of earnings of full-time salaried workers in the lowest-wage census region (the South) and in the retail sector. The proposed regulations would also allow employers to count non-discretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the minimum salary level, provided that the bonuses or incentive payments are paid annually or more frequently. The U.S. Department of Labor is not proposing any automatic increases in the minimum salary level, but is proposing that the salary level be updated every four years after notice and public comment.

The U.S. Department of Labor is also proposing to increase the annual salary threshold for the "highly compensated employee" exemption from \$100,000 to \$147,414. To qualify for the "highly compensated employee" exemption, an employee must meet the annual salary threshold and must satisfy at least one element of the executive, administrative, or professional exemption.

The proposed regulations do not include any changes to the duties requirements for any of the white collar exemptions.

New York's minimum salary level to qualify for the executive and administrative exemptions is currently higher than \$679 per week in all regions. However, New York does not set a minimum salary level for the professional exemption, so if these regulations take effect, employers may need to review the salary levels of professional employees to ensure that they meet the new threshold. In addition, New York's minimum salary level for the executive and administrative exemptions is "inclusive of board, lodging, or other allowances and facilities" while the federal salary level must be "exclusive of board, lodging or other facilities." So, if these regulations take effect, an employer that uses housing or meal allowances to meet the New York salary threshold will still need to ensure that the new federal salary threshold is met when those housing or meal allowances are not counted.

The U.S. Department of Labor has also posted on its web site [answers to some frequently asked questions](#) and a [fact sheet](#) regarding its proposed regulations. Comments to the proposed rule can be submitted through the [Federal eRulemaking Portal](#) within 60 days after the proposed regulations are published in the Federal Register.

If you have any questions about this Information Memo, please contact [Subhash Viswanathan](#), any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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