

## Legal Sidebar

# [Proposed Regulations Could Result in Overtime for More Workers](#)

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The Wage and Hour Division (WHD) of the U.S. Department of Labor has proposed [new regulations](#) to implement the [Fair Labor Standards Act](#)'s exemption for bona fide executive, administrative, and professional employees. In general, the proposed regulations would raise the salary threshold that must be met before an employee may be considered exempt from the statute's minimum wage and overtime pay requirements. Currently, the standard salary level that is required for the exemption is \$455 a week. Under the proposed regulations, that salary level would be raised to \$970 a week. Secretary of Labor Thomas Perez [maintains](#) that the proposed regulations "would restore overtime pay to millions of salaried workers whom the law was intended to protect." Others, however, have been critical of the proposed regulations. The U.S. Chamber of Commerce, for example, has [said](#) that the regulations would add more burdens to employers, while expecting them to "absorb the impact."

To be exempt as an executive, administrative, or professional employee, an individual must not only earn at least the specified amount; the WHD's regulations also require that an individual perform certain job duties. For example, to qualify as an exempt [executive employee](#), an individual must have a primary duty of management of the enterprise in which he is employed, or management of a customarily recognized department or subdivision of the enterprise. The individual must also customarily and regularly direct the work of two or more employees, and have the authority to hire or fire other employees, or be able to suggest and recommend personnel decisions. The WHD's regulations prescribe similar duty requirements that must be satisfied to qualify as an exempt administrative employee or exempt professional employee. The WHD's regulations emphasize that a job title alone is insufficient to establish the exempt status of an employee.

Under the WHD's existing regulations, so-called "[highly compensated employees](#)" who earn at least a certain amount in total annual compensation will also be deemed exempt if they customarily and regularly perform any one or more of the exempt duties of an executive, administrative, or professional employee. Currently, that compensation threshold is \$100,000. Thus, an individual with total annual compensation of at least \$100,000 who customarily and regularly manages a recognized department of an enterprise would be exempt as a highly compensated employee. The individual would not have to perform the other duties identified above. Under the proposed regulations, the compensation threshold would change to \$122,148 as of the effective date of the final rule, and would be updated annually by the Secretary of Labor.

While the WHD has proposed changes to the salary thresholds that must be met to be deemed an exempt employee, it has declined to propose specific revisions to the various duties that must be performed to be exempt. The WHD has indicated that, if it were to propose changes, it would need to consider the possibility of workers in some occupations being more or less likely to meet the various duties. Nevertheless, it has invited comments on the methodology and data sources that could be used to determine the impact of any changes to the existing duties. Comments on the proposed regulations must be submitted on or before September 4, 2015.

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