

## Trump administration's overtime proposal scales back Obama-era plan

*Pay threshold scaled back from what been proposed by Obama administration*

By: Tim Curtis Jeff Stein ◉ March 8, 2019

The Department of Labor announced new rules Thursday to determine which employees are eligible for overtime, a proposal that substantially reduces an Obama administration effort to extend overtime pay to even more workers.

The department proposed raising the overtime salary threshold — above which white-collar workers would not be eligible for overtime — from its current \$23,660 a year to \$35,308. That increase could make more than one million workers eligible for overtime, the department says.



In the 1970s, over 65 percent of America's salaried workforce was covered by the nation's overtime rules. Because of the 2004 overtime regulations, which dramatically weakened coverage, that number has now shrunk to 7 percent, one expert says. (Photo Illustration/Thinkstock)

The Department of Labor previously tried to increase the salary threshold under the Obama administration, when it sought to raise the threshold to around \$47,000 a year. That rule would have affected more than four million workers. A federal judge in Texas blocked the proposal in 2016, days before it was to take effect.

The Trump administration proposal will go through a 60-day comment period. The proposed rule could go into effect as early as January 2020.

For Maryland firms, any change to the federal overtime rules would automatically be adopted in the state.

The rule affects white-collar workers in non-management positions.

Who the law affects may be different in Maryland than in many other states. The state's average salary is more than \$57,000, according to state data. In Texas, for instance, the average annual salary is less than \$49,000.

That means the salary thresholds in Maryland, one of the most affluent states in the nation, are likely to be met more easily than in many other states.

Unlike the Obama rule, the Trump rule would not expand the class of workers eligible for overtime.

The work employers did to prepare for the Obama-era deadline may mean they do not have much work to do to prepare for the new rule, said one employment specialist.

"I would say that many employers when the 2016 rule had been released, went ahead and made adjustments to come into compliance with that rule," Fiona Ong, an attorney at Shawe Rosenthal LLP, said.

But employers who did not make preparations in advance of the 2016 rule change may want to continue waiting, Ong said, as the rule goes through the comment process and may see changes.

Julie Janofsky, an attorney with Fedder & Janofsky LLC, suggested firms get a head start on preparing for the new rule.

"I urged my clients (in 2016) to look at their workforce and identify those employees and think through the problem so they would not be hit with an emergency when the new regulation (took effect)," she said. "They should be thinking about that now again."

The new proposed rule does have a new wrinkle that employers will have to consider. This rule would allow firms to use a percentage of their commissions and bonuses toward the salary threshold.

That would mean that an employee just under the threshold and set to be eligible for overtime could become exempt once a bonus is added.

"This is huge and it's new with regards to the ... white-collar exemptions," Ong said. "This is supposed to reflect a much more modern pay structure."

There is still some question as to whether this new proposal would be accepted by the courts. Ong believes that it would because the threshold was raised using the same methods the Bush administration did the last time it set the salary threshold to where it stands now.

But Janofsky said she questioned the whether the new rule could stand.

"The reason why the Obama-era salary threshold increase was blocked by a Texas federal judge was because the judge ruled that there was no threshold contained in the rule ... any such test ran afoul of the actual statute," she said. "So it's unclear to me at this juncture whether this rule, which also raises the salary threshold, would also pass legal."

When the Obama administration proposal was unveiled, some employers said that while a higher threshold was long overdue the \$47,000 figure was too steep an increase.

In the 1970s, over 65 percent of America's salaried workforce was covered by the nation's overtime rules, The Washington Post reported. Because of the 2004 overtime regulations enacted under President George W. Bush, which dramatically weakened coverage, that number has now shrunk to 7 percent, said Judy Conti, government affairs director for the National Employment Law Project.

The Trump administration's rule would likely raise it to at most 25 percent, while Obama's would have raised it do about 33 percent, she said.

"The Trump Department of Labor is pretending to be a champion of workers but all they are doing is perpetuating a system that allows people to get phony titles and marginal extra responsibilities so they can be made to work as many hours as an employer wants without any extra pay at all," Conti told The Post. "No one should mistake this as a pro-worker policy."

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Julie Janofsky, an attorney with Fedder & Janofsky LLC, says employers once again have to prepare for proposed changes in federal overtime regulations. (File photo)