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Dems Introduce Bills to Raise Salary Minimum for Overtime Exemption

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Members of the House and Senate introduced companion bills on June 11, 2019 to amend the Fair Labor Standards Act to raise the minimum salary threshold for exempt executive, administrative, and professional (“EAP”) employees to north of \$50,000 and to automatically update the threshold every three years.

The “Restoring Overtime Pay Act of 2019” ([H.R. 3197](#), introduced by Rep. Mark Takano of California) would legislate, for the first time in U.S. history, the minimum salary for exemption under the EAP exemptions—a matter that Congress has delegated to the rulemaking authority of the U.S. Department of Labor since the FLSA’s passage in 1938. Sen. Sherrod Brown of Ohio introduced a [similar bill](#) in the Senate (S. 1786) on June 11.

The law would fix the salary threshold at a level equal to the 40th percentile of earnings of full-time salaried workers in the lowest-wage census region, as determined by the Bureau of Labor Statistics based on data from the second quarter of the calendar year preceding the calendar year in which such amount takes effect. [Representative Takano’s office notes](#) that if the bill were enacted today, the salary level would increase to “nearly \$51,000 per year.”

The bills intend to resuscitate the Obama Administration’s 2016 overtime rule, which would have raised the threshold salary for the EAP exemptions to \$913 per week (\$47,476 per year). That rule was [declared invalid](#) by a Texas federal district court days before it was to take effect.

Unless and until this bill becomes law, the USDOL will continue to set the minimum salary for exemption, currently \$455 per week (\$23,660 per year). The agency published a [notice of proposed rulemaking](#) to raise that threshold to \$679 per week (\$35,308 per year) in March 2019.

Will the bills become law? Not likely, with Republicans holding a majority in the Senate and President Trump sure to veto the bills if they manage to pass both chambers. Fans of stalled overtime legislation may remember the “Restoring Overtime Pay Act of 2017,” also introduced by Rep. Takano and seeking to peg the minimum salary for exemption at the same level as the recently-introduced bills. That 2017 bill died in committee.

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