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President Obama and The DOL Announce Proposal to Extend Overtime Pay to Five Million More Workers

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President Obama and the **U.S. Department of Labor (DOL)** have announced a proposal that would result in nearly five million additional white-collar workers qualifying for overtime pay. The proposal would raise the current salary level that executive, administrative, and professional employees must receive in order to qualify as "exempt" from the overtime requirements of federal law from \$23,660 annually, to \$50,440 annually for 2016.

Under current DOL regulations, most white collar employees – executives (managers), administrative employees, and professionals – are exempt from the overtime rules and need not be paid overtime for hours worked over 40 in a workweek if they satisfy two conditions. First, they must perform "exempt" duties as defined by the DOL regulations. Second, they must be paid a guaranteed salary of at least \$455 per week, or about \$23,660 annually.

The new proposal is projected to raise the salary level to qualify for these white collar exemptions to \$970 per week in 2016, or about \$50,440 annually. This proposed salary level is set at the 40th percentile of weekly earnings for full-time salaried workers. The DOL stated that it chose this number because it represented "the most appropriate line of demarcation between exempt and nonexempt employees."

In addition, the salary level for employees who qualify for the "highly compensated employee" exemption would rise from \$100,000 per year to a projected \$122,148 per year. This number represents the 90th percentile of weekly earnings for full-time salaried workers.

Significantly, however, the DOL's new proposal does not lock in these new salary levels. Rather, the DOL contemplates that the salary levels will rise over time, either because they will be indexed to the Consumer Price Index (a measure of inflation) or pegged to the 40th and 90th percentiles of earnings for full-time salaried workers, respectively. The DOL apparently intends to seek comments on which method is the most appropriate.

Bear in mind – this proposal is not the law yet. The DOL still has to officially publish the new proposal in the Federal Register, and provide the public with an opportunity to review and comment. The DOL is also apparently seeking comment on possible changes to the "duties" portion of the white collar exemption requirements, but the Department has not articulated what these possible changes are. Regardless, none of these changes to either the salary levels or the "duties" test for exempt employees will take effect until the period for comment has passed and the DOL has considered the submitted comments – a process that will likely take several months, at least.

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