

DOL Issues Proposed Overtime Rule

Guarantees Time-and-a-Half Pay to Any Employee Earning Less Than \$55,000 per Year

Last week, the U.S. Department of Labor (DOL) issued a [proposal](#) to update regulations governing which employees are entitled to overtime pay protections under the Fair Labor Standards Act (FLSA). These rules apply to employees of all businesses that have an annual gross volume of sales of \$500,000 or more. Here are the highlights of the proposed rule:

- **The salary threshold under which virtually all employees are guaranteed time-and-a-half overtime pay will increase from \$35,568 to \$55,068 per year.** This threshold will be automatically increased every three years based upon "current wage data."
- **The "highly compensated employee" salary threshold will increase from \$100,000 to \$143,988 per year.** Above this threshold, only a minimal showing is needed to demonstrate an employee is not eligible for overtime.
- **Up to 10 percent of the salary level can be satisfied with commissions and "non-discretionary" bonuses.**

The Department is taking comments on its proposed rule through the end of October (the exact date will depend on when the proposal is published in the *Federal Register*), and ASTA intends to comment. DOL will then issue a final rule, which could be effective as early as mid-2024. That said, given its impact on a range of businesses, the proposal is almost guaranteed to be challenged in court

or through legislation in Congress. Indeed, a similar proposal issued by the Obama Administration in 2015 to raise the salary threshold to over \$47,000 per year was [struck down by a federal judge in 2017](#) and never went into effect.

While there is considerable uncertainty as to when – or even if – this proposal will go into effect, given the potential for sharply increased payroll costs, the need to update payroll systems, etc., agency owners should consider ways to respond if it becomes reality. To help begin that process, we will draw your attention to two members-only resources on the topic: 1) guidance outlining courses of action employers can take in the event the salary threshold is increased, developed during the Obama Administration's push on this issue; and 2) a white paper outlining the FLSA's [Retail or Service Establishment \(RSE\) exemption](#) for highly commissioned employees, which until 2020 had been closed to travel agencies but is now open thanks to a [multi-year ASTA advocacy campaign](#). Both are linked below.

We will keep you updated as this situation evolves. If you have any questions in the meantime, don't hesitate to contact us at GovtAffairs@asta.org.

Thank you!

Additional Resources

- [DOL Website on New Proposed Rules](#) – August 30, 2023
- [ASTA Guidance: Employer Options to Respond to New Overtime Rule](#)
– July 2016
- [ASTA Fact Sheet: Retail or Service Establishment Exemption](#) – June 2020