

The Department of Labor Speaks Again New \$35,000 Salary Threshold Proposed for Exempt Employees

It has been some time since the Department of Labor and Fair Labor Standards Act were in the news. But just last week, on March 7, 2019, the Department proposed a new salary threshold for exempt employees of \$35,000 per year. This applies to employees who are exempt from overtime rules because of their executive, administrative, or professional duties. The announcement comes about three years after the Obama Administration's doomed attempt to set a threshold at almost \$48,000.

If you recall back in 2016, the Obama Administration announced the "New Rule" that raised the "salary-basis test" for exempt executive, administrative, and professional employees from \$23,660 to \$47,892 per year. But just before the rule was supposed to take effect on December 1, 2016, the Eastern District of Texas issued a nation-wide injunction to stop its implementation. The Obama administration's Department of Labor appealed that ruling.

In the meantime, Donald Trump was elected president and the political landscape on the rule completely changed. Our last [Alert](#) on this topic discussed how the Department under its then-new Labor Secretary Alexander Acosta was slowing down the appeals process on the New Rule. The Department also issued a new Request for Information ("ROI") to seek public input regarding what salary level, if any, the Department should implement. Soon after, the Texas court held that the rule was invalid because the Department had "exceeded its authority and gone too far with the Final Rule."

After receiving over 200,000 submissions in response to its ROI, the Department now proposes a \$679 per week (\$35,000 annually) threshold for exempt employees. The Department's proposal also includes an automatic upward adjustment to the salary level every four years.

Of course, this new proposed threshold is now open for public comment and any final changes are likely months away.

The lower threshold may not be as much of a help to the nonprofit world as originally hoped. Many nonprofits spent time and resources in 2016 to reclassify employees in anticipation of the New Rule. But their preparation was not rewarded. By the time the Texas court issued its injunction and Acosta's Department of Labor issued its ROI, many businesses and nonprofits had already implemented the hard choices to reclassify employees and raise salaries. In fact, it was those employers that dragged their feet in making changes that ultimately saved the most time and money.

In any case, if the new proposed threshold becomes final, some nonprofits will undoubtedly have to either raise the base salary of exempt employees or reclassify them to an hourly rate. Employers in other

jurisdictions won't be affected by the federal threshold at all—such as California which requires that the base salary of exempt employees be at least twice the state's minimum wage or, \$49,920 in 2019. As we discussed back in [2016](#), failure to classify or pay an employee properly can result in back wages, liquidated damages, and costly attorney fees both to defend a wage and hour action or to settle a claim.

If you have a question about employee classification or exemptions from the minimum wage and overtime rules, contact [Christine Lambrou Johnson](#).



Christine Lambrou Johnson, *Of Counsel* at Gammon & Grange, P.C., is an experienced litigator representing employers in their obligations under federal and state employment law. She prosecuted dozens of FLSA wage and hour law claims while serving as Assistant Attorney General for the State of Illinois, and successfully defended numerous discrimination suits.

Gammon & Grange, P.C. conducts Employment and FLSA Audits to ensure compliance with the patchwork of state and federal regulations and ultimately to help nonprofits and for-profits alike flourish as their employees thrive. Ms. Johnson would be happy to provide a no-cost initial consultation to determine whether your organization could benefit from the audit.

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