

An Updated Federal Overtime Rule: When's It Coming?

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Twice a year (in the spring and the fall), each federal agency publishes a “[Regulatory Agenda](#)” that discloses the proposal and final rules it has recently issued, together with those that it plans to issue. Back in the fall of 2021, the U.S. Department of Labor’s Wage and Hour Division noted in the agenda that it was reviewing the regulations for exemption of executive, administrative, and professional (“EAP”) employees from the Fair Labor Standards Act’s minimum wage and overtime requirements codified in 29 C.F.R. Part 541.

One of the “primary goals” of the planned rulemaking is to update the minimum salary level requirement for employees who, by virtue of their duties, would qualify for an EAP exemption under [section 13\(a\)\(1\) of the FLSA](#). You may recall that in May 2016, [the Obama DOL issued a new overtime rule](#), to take effect on December 1 of that year, that would have—among other things—required the DOL to update (*i.e.*, increase) the salary threshold for EAP exemptions every three years. In November 2019, before it could take effect, [a federal judge in Texas enjoined the new overtime rule](#) on a nationwide basis, declaring it “unlawful.”

In September 2019, [the Trump DOL issued a new overtime rule](#), which took effect on January 1, 2020, raising the weekly minimum salary for EAP exemptions from \$455 per week (\$23,660 per year) to \$684 per week (\$35,568 per year). The increase was the first in 15 years, but nowhere near the boost the Obama administration tried to roll out in 2016 (to \$913 per week, or \$47,476 per year).

Cut to the Biden administration. The DOL noted in the fall 2021 Regulatory Agenda that “[r]egular updates [to the minimum salary for EAP exemption] promote greater stability, avoid disruptive salary level increases that can result from lengthy gaps between updates and provide appropriate wage protection.” The agency listed a timetable for issuance of a proposed overtime rule update (a Notice of Proposed Rulemaking, or NPRM) as April 4, 2022. Seven months later, we’ve seen no proposed rule.

If and when issued, the public will have the opportunity to comment on the proposed rule. (Back in 2016, the Obama DOL [received more than 293,000 comments](#) to its proposed overtime rule.) Stay tuned.

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