

## Legislative Update MARCH 2019\*

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### **UNITED STATES DEPARTMENT OF LABOR PROPOSES NEW OVERTIME RULE**

On March 7, 2019, the U.S. Department of Labor proposed an increase in the salary-level threshold for white-collar exemptions to \$35,308 from \$23,660 annually, and also proposed increasing the annual salary threshold for the "highly compensated employee" exemption from \$100,000 to \$147,414. These figures have not been changed at the Federal level since 2004.

The proposal does not call for automatic adjustments to the salary threshold, does not create different salary levels based on region of the country, and does not make any changes to the duties tests. [Editor's Note: The minimum salary levels for the executive and administrative exemptions under New York State law are already higher than the proposed Federal level of \$35,308 annually, but New York State has not established a minimum salary level for the professional exemption].

Unless exempt, employees covered by the Fair Labor Standards Act must receive at least time and one-half their regular pay rate for all hours worked over 40 in a workweek. Meeting the salary threshold does not automatically make an employee exempt from overtime pay; the employee's job duties also must primarily involve executive, administrative or professional duties as defined by the regulations. The duties tests are summarized as follows:

- For the **executive exemption**, the employee's primary duties must be to manage the enterprise or a department or subdivision of the enterprise, and to customarily and regularly direct the work of at least two employees, and the employee must have the authority to hire or fire, or his or her suggestions and recommendations as to the hiring, firing or changing the status of other employees must be given particular weight.
- For the **administrative exemption**, the employee's primary duty must be to perform office or nonmanual work directly related to the management or general business operations of the employer or the employer's customers, and must include the exercise of discretion and independent judgment with respect to matters of significance.
- For the **professional exemption**, the employee's primary duty must be work requiring knowledge of an advanced type in a field of science or learning customarily acquired by prolonged, specialized, intellectual instruction and study, or in one of a few other similarly highly specialized fields, such as teaching, computer analytics and engineering.

Source: Allen Smith, J.D., SHRM

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