



AFSCME Facts

New Biden Administration Rule Extends Overtime Protections to Millions of Workers May 13, 2024

The Biden administration has issued a final rule that expands federal overtime protections and ensures those protections automatically keep up with earnings growth going forward. Some workers will benefit as soon as July 1 of this year, and more will be helped beginning Jan. 1, 2025. This fact sheet describes key parts of the rule.

Why is the new overtime rule needed?

The U.S. Department of Labor (DOL) has the authority to periodically update overtime rules but has rarely done so in recent decades. As a result, the minimum earnings threshold — which is used to determine eligibility for overtime — has failed to keep pace with earnings growth and a much smaller share of the workforce is entitled to overtime protections than was intended.

To fix this, the Biden administration is raising the minimum earnings threshold substantially and requiring it to be updated regularly. Up to three million workers will be helped within one year of the rule going into effect. The new rule also raises the salary threshold for the highly compensated employee (HCE) exemption, which provides a more simplified way to determine overtime eligibility for high earners.

Who is eligible for overtime pay?

Federal law requires workers to receive overtime pay for hours worked over 40 hours per week unless those workers are "exempt" under the law. Workers are exempt if their salary and job duties do not qualify for overtime protections. To be exempt, workers generally must be white collar employees. "Non-exempt" workers are entitled to those same overtime provisions. Exemptions are determined through both a job duties test, which determines whether the worker qualifies based on the types of work they do, and the minimum earnings threshold. Both conditions must be met for a worker to be considered exempt. Law enforcement, corrections, probation and parole, EMS and similar workers are not exempt regardless of the job duties tests and salary thresholds.

What are the new earnings thresholds?

The earnings threshold was last set in 2019 at \$684 per week or \$35,568 for a full-year worker. The Biden administration will increase the threshold to \$1,128 per week or \$58,656 per year. The HCE earnings threshold will increase to \$151,164.

When does the new rule take effect?

DOL will phase in the new thresholds in two steps. On July 1, 2024, the Biden administration will increase the threshold to \$844 per week (or \$43,888 for a full-year worker). On Jan. 1, 2025, the Biden administration will increase the threshold to \$1,128 per week (or \$58,656 for a full-year worker). The increase to the HCE earnings threshold will follow a similar schedule; the first increase to \$132,964 comes July 1 and a subsequent increase to \$151,164 comes on January 1.

Why is an increase in the salary threshold significant?

Workers who earn less than the minimum salary threshold are automatically treated as non-exempt employees, i.e., guaranteed overtime pay under the law. By raising the minimum salary threshold, the Biden administration is effectively extending overtime protections to millions of workers who earn between \$35,568-\$58,656 per year regardless of the types of work they do.

The administration estimates the new threshold for HCE exemption is expected to affect 300,000 workers, with some becoming newly eligible for overtime benefits depending on the type of work they do.

How will the new thresholds account for earnings growth in the future?

A key element of the new overtime rule is a regular update to the thresholds to reflect earnings growth. DOL will update this threshold every three years beginning on July 1, 2027, to match the equivalent of the 35th percentile of average weekly earnings of full-time salaried workers in the South Census Region. The HCE earnings threshold will be set to the 85th percentile using the same methodology.

Does the new rule change any provisions regarding compensatory time?

No. Existing law provides compensatory time (also called comp time) for state and local government workers in lieu of overtime pay in certain circumstances. The new rule makes no changes to this provision.

How does this rule impact state overtime laws?

Some states provide better overtime benefits to non-exempt workers than federal law (e.g., California requires non-exempt workers be paid double the regular rate of pay for hours worked more than twelve hours daily). Some states strictly follow federal requirements with no additional benefits. The new rule will not reduce benefits for those workers in states with more generous overtime laws. Where federal and state overtime requirements differ, employers generally must follow the law most favorable to the worker.

Does the new salary threshold apply to workers in Puerto Rico?

No. A special salary level of \$455 per week currently applies to workers in Puerto Rico. The Biden administration initially proposed extending the new threshold to Puerto Rico and other U.S. territories subject to the federal minimum wage. AFSCME strongly supported this proposal. Unfortunately, the final rule does not apply the new salary thresholds outside of the 50 states and the District of Columbia.