



# White Collars May Turn Blue: Prepare for New Rules on Overtime Eligibility

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Responding to a call by President Obama last year, the U.S. Department of Labor this week issued a [proposal](#) to update the regulations governing which employees qualify for the “white collar” exemptions to federal minimum wage and overtime pay requirements. Currently those exemptions – for executive, administrative and professional employees – require the workers to meet job duties-related tests and receive a salary of at least \$455 per week, or \$23,660 annually. Certain computer and outside sales employees are also exempted.

The proposed regulations would increase the salary threshold for the “white collar” exemptions to a projected level in 2016 of \$970 per week, or \$50,440 annually. Many expected the DOL’s proposal also to include a change to the duties element of the white collar exemptions, possibly moving from a “primary duty” test to a quantitative standard that required a minimum percentage of an employee’s time be spent on exempt tasks. While the DOL’s proposal invites input on that issue, it does not include a specific change to that component. Time will tell whether that issue re-emerges.

Following a comment period, the DOL will publish final regulations, and then (absent a successful legislative or legal challenge) the new rules are likely to become effective in early 2016. What is the practical effect of this change? Many employees who are currently classified as exempt from overtime pay will no longer qualify at their current salary levels. The DOL estimates that 4.6 million workers would, without some intervening action by their employers, become newly entitled to overtime pay for working more than 40 hours in a week. One study placed the price tag of this change on restaurants and retailers alone, assuming they did nothing to mitigate its effects, at \$9.5 billion per year.

Employers should be preparing now. Here is a “to-do” list:

- Coordinate with industry associations, legislators and lobbyists on recommended steps in response to the proposed regulations. Employers have a right to send letters to the DOL during the 60-day comment period.
- Seek guidance from experienced wage-and-hour counsel, not only to navigate the complexities, but also to shield the internal analysis under the attorney-client privilege.
- Determine which employees in the organization currently classified as exempt would not meet the proposed salary thresholds.
- Consider whether to increase the salaries of the exempt population to the higher floor, and analyze how such a move would affect the bottom-line.
- Evaluate the possible need to re-classify workers to non-exempt status, entitling them to overtime pay.
- Analyze options for minimizing increased labor costs. These may include configuring the hourly rate, bonuses and anticipated overtime pay, such that the total compensation package of re-classified employees is approximately the same as when they were salaried, exempt employees. Other options to avoid or reduce overtime liability may include reducing the scheduled hours of these workers, hiring additional personnel to spread out hours, or transferring certain tasks up the chain to exempt employees.
- Identify the effect that re-classification will have on the employees’ eligibility for benefits (as often there are certain benefits available only to exempt employees).
- Develop a strategy for communicating with the workforce. Employees who will be re-classified as non-exempt may view the change as a demotion or a loss of managerial prestige. Consider using a fluctuating work week program for newly non-exempt employees (paying a fixed salary, tracking hours worked, and paying a half-time overtime premium), so that workers continue to deem themselves “salaried” employees.
- Prepare for the increased administrative burdens associated with newly re-classified non-exempt workers, and the need to train them on filling out timekeeping records, complying with break requirements, and restricting their after-

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hours work (including, for instance, engaging in business-related emails from their laptops, home computers or smartphones).

- Be aware that the widespread reporting about these new rules may cause employees to pay more attention to their compensation structure. Monitor and address areas of vulnerability. If there are existing risks with current job classifications, consider addressing them now and using the proposed rule changes as an explanation.

This blog post was drafted by [Frank Neuner](#), an attorney at Spencer Fane. For more information, visit [spencerfane.com](http://spencerfane.com).