

The logo for Robinson+Cole, with the plus sign in green.

Labor + Employment

A blue cover of an 'EMPLOYEE HANDBOOK' with a white geometric pattern.A small red text label 'Attorney Advertising' in the top right corner of the header image.

July 2015

## U.S. Department of Labor Proposes New Rule Raising the Salary Basis for “White-Collar” Overtime Exemptions and Soliciting Comments on Revising the Exempt Duties Tests

On June 30, 2015, the United States Department of Labor (DOL) issued a Notice of Proposed Rulemaking seeking comments on the DOL’s proposal to raise the salary threshold for the so-called “white-collar” exemptions from \$455 per week (\$23,660 annually) to an expected \$970 per week (\$50,440 annually), as projected by the DOL for 2016. The DOL also proposes that the salary basis track the 40th percentile of the earnings of full-time salaried workers so that the threshold will adjust automatically in the future without further DOL action. The DOL further seeks comments on the current duties tests for determining whether employees are performing work that is exempt from overtime under the executive, administrative, professional, outside sales, and computer exemptions.

Under the federal Fair Labor Standards Act, employers must pay employees overtime pay of one and one-half times their regular rate for any hours worked over 40 in a workweek, unless the employer can establish that the employee is exempt. The salary threshold for “white-collar” exemptions was last updated in 2004. Many states, including Connecticut, Massachusetts, and New York, have separate salary basis and duties tests for determining whether employees are exempt.

The DOL’s proposal did not include proposed changes to the duties tests for comment; rather, it seeks comment on whether any changes should be made to the duties tests for the “white-collar” exemptions. In particular, the DOL noted difficulties in litigating the “primary duty” test, which requires employers to show that an exempt employee’s primary duty involves the performance of exempt tasks. The DOL also noted that some commentators believe it should consider a rule that requires workers to spend at least 50 percent of their time on exempt tasks to qualify for the exemption, as done in California. This may have a substantial impact on jobs such as store managers and assistant managers who may have management as their primary duty but who spend more than 50 percent of their time helping customers, staffing cash registers, stocking products, and performing other functions typically considered to be nonexempt tasks.

The Notice of Proposed Rulemaking was published in the Federal Register on July 6, 2015, and is subject to a 60-day comment period. Interested parties may submit comments at [www.regulations.gov](http://www.regulations.gov) before September 4, 2015. If the proposed rule becomes final, the salary threshold increase is not expected to take effect until sometime in 2016. To view the announcement by the U.S. Department of Labor, click [here](#). To view the Notice of Proposed Rulemaking, click [here](#).

---

For more information or if you have questions about how this law affects your policies and practices, please contact one of the following lawyers in the firm's [Labor, Employment, Benefits + Immigration Group](#).

[Stephen W. Aronson](#) | [Ian T. Clarke-Fisher](#) | [Britt-Marie K. Cole-Johnson](#) | [Peter A. Dagostine](#)

[Alice E. DeTora](#) | [Natale V. Di Natale](#) | [Katherine C. Glynn](#) | [Sandra Marin](#) | [Susan N. Masters](#)

[Matthew T. Miklave](#) | [Nicole H. Najam](#) | [Jean E. Tomasco](#) | [Jennifer L. Shanley](#)

For insights on legal issues affecting various industries, please visit our [Thought Leadership](#) page and subscribe to any of our newsletters or blogs.

---

[Boston](#) | [Hartford](#) | [New York](#) | [Providence](#) | [Stamford](#) | [Albany](#) | [Los Angeles](#) | [Miami](#) | [New London](#) | [rc.com](#)

---

© 2015 Robinson & Cole LLP. All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission. This document should not be considered legal advice and does not create an attorney-client relationship between Robinson+Cole and you. Consult your attorney before acting on anything contained herein. The views expressed herein are those of the authors and not necessarily those of Robinson+Cole or any other individual attorney of Robinson+Cole. The contents of this communication may contain attorney advertising under the laws of various states. Prior results do not guarantee a similar outcome.