



Legislative Issues

McAllen Chamber of Commerce

Department of Labor's Overtime Rule Overview

What does the rule do?

The new regulations will hurt Texas businesses and others by dramatically increasing the threshold at which salaried (exempt) employees must be paid overtime. The rule also automatically "updates" the threshold every three years.

- Raises the threshold under which salaried workers are eligible to receive overtime pay from \$455 a week (\$23,660 per year) to \$913 a week (\$47,476 per year).
- Automatically raises the salary threshold every three years.
- Increases the definition of "Highly Compensated Executives" from \$100,000 to \$134,000.
- Other implications of the rule and some of the unseen impacts include:
 - Millions of employees across the country will have to be reclassified from salaried to hourly workers, resulting in restrictions on their work hours that will deny them opportunities for advancement and hinder performance of their jobs--to the detriment of their employers, their customers, and their own career.
 - Estimated costs to employers nationally have been reported as roughly \$1.49 billion in year one alone.
 - There is the potential that employers may cut their workforce numbers altogether. As a matter of budget, employers have (now less than) 6 months to prepare for the changes.

Why does the rule matter?

The Overtime Rule exceeds the authority of the DOL. It arbitrarily and drastically alters DOL's minimum salary requirements (increasing the minimum by 100%) and will impose new overtime payment on businesses of all sizes and employers that employ more than 4.2 million individuals who are currently considered exempt from overtime. Further, the Overtime Rule violates the FLSA and exceeds DOL's regulatory authority by establishing an unprecedented "escalator" provision that will dramatically increase the minimum salary over time.

Finally, the costs of compliance (estimated to be approximately \$1.49B in year one alone) will force many smaller employers operating on fixed budgets to cut critical programming, staffing, etc. and significantly diminishes, or eliminates completely, the ability to effectively and flexibly manage their workforce upon losing the exemption of frontline executives, administrators, and professionals.

What was the lawsuit?

The McAllen Chamber and a coalition of 21 states followed the TAB, the U.S. Chamber, National Association of Manufacturers (NAM), and the National Federation of Independent

Business (NFIB), in leading a broad business coalition challenging the rule and asking that it not be implemented.

The lawsuit argued that the DOL exceeded its statutory authority in issuing the regulation and violated the Administrative Procedure Act. Also, the automatic “escalator” provision means that employers will have to go through their reclassification analysis every three years. The overtime rule would have resulted in salaried professional employees being converted to hourly wages, and it would reduce workplace flexibility, remote electronic access to work, and opportunities for career advancement.

The lawsuit also stated that the DOL ignored regional and industry differences that have previously been acknowledged, resulting in a salary threshold not suitable for all. The suit also argues that the provision to automatically update the salary threshold every three years without taking input from affected parties is not authorized by the Fair Labor Standards Act or any other relevant statute.

Latest Update on the Rule:

The U.S. Department of Labor plans to propose new regulations governing overtime exemptions from the Fair Labor Standards Act, to March 2019. DOL's Notice of Proposed Rulemaking (NPRM) "will propose an updated salary level for exemption and seek the public's view on the salary level and related issues."

The DOL is proposing to set a salary threshold below which employees must be paid overtime. Today, it remains at \$23,660, after the Obama administration unsuccessfully attempted to raise it to \$47,476. President Trump's Department of Labor is expected to propose a threshold somewhere between \$32,000 and \$35,000.