



US DOL Proposes Two New Rules **Updates to White Collar Exemption and Regular Rate of Pay**

In addition to its recent joint employment [rule](#), the U.S. Department of Labor ([DOL](#)) has proposed two rules that all employers should note.

The first [proposed rule](#) would increase the minimum salary threshold for the federal "white collar exemption" from \$23,660 per year to \$35,308 per year. This rule would not change the duties tests applied to [executive](#), [administrative](#) or [professional](#) employees. It also would not provide for automatic salary threshold increases, although DOL anticipates reviewing the salary threshold every four years going forward. DOL has published [answers](#) to some frequently asked questions, and said that it expects the final rule to take effect in January 2020.

We note that New York has higher minimum salary thresholds for exempt administrative or executive employees:

- New York City employers with at least 11 employees- \$58,500 per year
- New York City employers with 10 or fewer employees- \$52,650 per year
- Nassau, Suffolk and Westchester counties- \$46,800 per year
- All other counties- \$43,264 per year

The second [proposed rule](#) would update regular rate requirements under the Fair Labor Standards Act ([FLSA](#)). DOL said that the rule would clarify that the following items could be excluded from an employee's regular rate of pay (and thus also from the time-and-one-half overtime rate):

- the cost of providing wellness programs, onsite specialist treatment, gym access and fitness classes, and employee discounts on retail goods and services;
- payments for unused paid leave, including paid sick leave;
- reimbursed expenses, even if not incurred "solely" for the employer's benefit;
- reimbursed travel expenses that do not exceed the maximum travel reimbursement permitted under the Federal Travel Regulation System regulations and that satisfy other regulatory requirements;
- discretionary bonuses;
- Benefit plans, including accident, unemployment, and legal services; and
- Tuition programs, such as reimbursement programs or repayment of educational debt.

As with the first rule, DOL has provided [answers](#) to some frequently asked questions about this proposal.

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