

## Federal Overtime Thresholds and State Responses

Feb. 5, 2020

	Threshold	Portion of Full-time Salaried Workforce Covered	Status / Notes
<b>Federal Overtime Salary Threshold</b>			
Obama US DOL Rule	<p>\$47,476 by 2016; projected increases would have been to \$51,064 by 2020, \$55,055 by 2023, \$59,098 by 2026; \$63,346 by 2029<sup>1</sup></p> <p>A very moderate benchmark set to the 40th percentile of weekly earnings of salaried workers in the South Census Region -- the lowest-wage region of the US.</p>	33% <sup>2</sup>	Replaced by Trump US DOL rule
Trump US DOL Replacement Rule	<p>\$35,568 by 2020</p> <p>A far weaker standard that protects 8 million fewer workers than the Obama rule<sup>3</sup></p>	15% <sup>4</sup>	Current final US DOL rule

<p>Obama US DOL Rule equivalent for each region of the US</p>	<p><u>Northeast</u>: \$61,048 by 2020; \$65,832 by 2023; \$70,668 by 2026  <u>Midwest</u>: \$58,240 by 2020; \$62,816 by 2023; \$67,444 by 2026  <u>West</u>: \$61,204 by 2020; \$66,988 by 2023; \$70,876 by 2026  <u>South</u>: \$51,064 by 2020; \$55,055 by 2023; \$59,098 by 2026</p> <p>The Obama threshold was based on the South Census region since it applied to all 50 states. Regional equivalents of it for the higher wage Northeast, West and Midwest Census Regions are higher.</p>		
<p>Salary Threshold to Restore Overtime Coverage to Highest Level Set During 1940s through 1970s  (the 55<sup>th</sup> percentile of weekly earnings of salaried workers)</p>	<p>\$71,448 by 2020 &amp; \$82,732 by 2026</p> <p>As the Obama Administration’s US Department of Labor recounted in its 2015 overtime rule notice of proposed rulemaking (NPRM), historically the Fair Labor Standards Act’s overtime salary threshold for the short duties test ranged from the 35<sup>th</sup> to 55<sup>th</sup> percentile of weekly earnings of full-time salaried workers. A 55<sup>th</sup> percentile salary threshold would restore overtime coverage to its past highwater mark in the US when the majority of full-time salaried workers were covered.<sup>5</sup></p>	<p>63% as of 1975<sup>6</sup></p>	
<p>Historic Ratio of Federal Overtime Threshold to Minimum Wage during 1940s through 1970s</p>	<p>3 x the minimum wage</p> <p>As the Obama Administration’s US Department of Labor also detailed in its 2015 overtime rule notice of proposed rulemaking (NPRM), historically during the 1940s through 1970s the Fair Labor Standards Act’s overtime salary threshold for the short duties test averaged at least 3 times the earnings of a full-time minimum wage worker.<sup>7</sup></p>		
<p><b>States That Filed Comments Opposing the Trump Overtime Rule as Inadequate to Protect Workers</b></p>			
<p>NY, PA, CA, DE, IL, IA, MD, MA, VT, WA, MN, NJ, NM, RI, CT, VA, DC, WA, MI</p>	<p>State attorneys general, governors, or labor departments filed comments opposing Trump US DOL overtime rule as being insufficient to protect workers<sup>8</sup></p>		

<b>State Overtime Salary Thresholds – Approved and Phasing In</b>			
WA	2.5 x state minimum wage; projected to be \$83,356 by 2028 <sup>9</sup>		Approved Dec. 2019 and phasing in
CA	\$62,400 by 2022 <sup>10</sup>		Approved 2016 and phasing in
NY	\$58,500 by dates between 2019 and mid-2020's varying by region <sup>11</sup>		Approved 2016 and phasing in
CO	\$55,000 by 2024 <sup>12</sup> ; approximately the Obama threshold for the South Census Region		Approved Jan. 2020 and phasing in
PA	\$45,500 by 2022 <sup>13</sup>		Approved Feb. 2020 and phasing in
<b>State Overtime Salary Thresholds – State Legislative Proposals</b>			
MA	\$64,000 by 2024 <sup>14</sup> ; approximately the Obama threshold for the Northeast Census Region		Legislation introduced in 2019; action expected in 2020
ME	\$55,224 by 2022 <sup>15</sup> ; the Obama threshold for the South Census Region		Legislation introduced in 2019; action expected in 2020
<b>State Overtime Salary Thresholds – States Launching DOL Rulemakings (without a proposal yet)</b>			
MI	Gov. Whitmer cited the Obama threshold of \$51,000 in 2020 as a key benchmark; further noted that cost-of-living data shows that Michigan households of four need \$61,000 to afford the basics <sup>16</sup>		Agency rulemaking announced Oct. 2019

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<sup>1</sup> Economic Policy Institute, “More than eight million workers will be left behind by the Trump overtime rule,” available at <https://www.epi.org/blog/more-than-eight-million-workers-will-be-left-behind-by-the-trump-overtime-rule-workers-would-receive-1-4-billion-less-than-under-the-2016-rule/>

<sup>2</sup> Analysis by Economic Policy Institute (Jan. 2020).

<sup>3</sup> Ibid.

<sup>4</sup> Economic Policy Institute, “More than eight million workers will be left behind by the Trump overtime proposal” (Apr. 8, 2019), available at <https://www.epi.org/publication/trump-overtime-proposal-april-update/>

<sup>5</sup> US Dep’t of Labor, Notice of Proposed Rulemaking Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, 80 FR 38515 (July 6, 2015), available at <https://www.federalregister.gov/documents/2015/07/06/2015-15464/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and-computer-employees>

<sup>6</sup> Economic Policy Institute, “What’s at stake in the states if the 2016 federal raise to the overtime pay threshold is not preserved—and what states can do about it,” (Nov. 15, 2017), available at <https://www.epi.org/publication/whats-at-stake-in-the-states-if-the-2016-federal-raise-to-the-overtime-pay-threshold-is-not-preserved/>

<sup>7</sup> Ibid.

<sup>8</sup> Letter from Fourteen State Attorneys General to Hon. Alex Acosta & Melissa Smith Re: Notice of Proposed Rulemaking (RIN 1235-AA20) Defining and Delimiting the Exemptions for Administrative, Executive, Professional, Outside Sales, and Computer Employees (May 21, 2019). Letter from Michigan Gov. Gretchen Whitmer re Notice of Proposed Rulemaking Defining and Delimiting the Exemptions for Administrative, Executive, Professional, Outside Sales, and Computer Employees; RIN 1235-AA20 (May 17, 2019). Letter from Wisconsin Secretary of Workforce Development Caleb Frostman re Comments to DOL-WHD NPRM: Regulations pertaining to the Section 13(a)(a) exemption under the Fair Labor Standards Act, DOCKET ID 2019-0001 (May 20, 2019).

<sup>9</sup> Wash. State Dep’t of Labor & Indus., “New salary threshold implementation schedule” (Dec. 2019), available at <https://lni.wa.gov/forms-publications/F700-207-000.pdf>

<sup>10</sup> SHRM, “California’s Exempt Salary Threshold Will Rise Regardless of Blocked Overtime Rule” (Dec. 15, 2016), available at <https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/overtime-california-employers.aspx>

<sup>11</sup> New York State Dep’t of Labor, “Administrative Employee Overtime Exemption Frequently Asked Questions (FAQ)”, available at <https://www.labor.ny.gov/legal/counsel/pdf/administrative-employee-overtime-exemption-frequently-asked-questions.pdf>

Note that in the remainder of New York State outside of New York City, Nassau, Suffolk and Westchester counties, the overtime salary threshold will not reach \$58,500 until the state minimum wage finishes phasing up to \$15 an hour. The final schedule for that state-wide phase-up to \$15 is to be announced by the New York State Director of the Budget in consultation with the Commissioner of Labor, per legislation adopted in 2016. Estimated that state-wide wage will reach \$15 by mid-2020’s.

<sup>12</sup> CO Dep’t of Labor & Employment, Press Release, “Labor Department Adopts New Colorado Overtime and Minimum Pay Standards Rule,” (Jan. 22, 2020), available at <https://www.colorado.gov/pacific/cdle/news/labor-department-adopts-new-colorado-overtime-and-minimum-pay-standards-rule>; Colorado Overtime & Minimum Pay Standards Order (COMPS Order) #36, 7 CCR 1103-1 (2020), available at <https://www.colorado.gov/pacific/sites/default/files/7%20CCR%201103-1%20Adopted%20COMPS%2036%20Clean.pdf>

<sup>13</sup> South Pittsburgh Reporter, “State Independent Regulatory Review Commission approves new overtime rules” (Feb. 4, 2020), available at <https://www.sopghreporter.com/story/2020/02/04/news/state-independent-regulatory-review-commission-approves-new-overtime-rules/20399.html>

<sup>14</sup> An Act updating overtime protections to protect the Commonwealth’s middle class workers, Massachusetts General Court, H. 1609 / S. 1092, 191<sup>st</sup> Leg. Session, available at <https://malegislature.gov/Bills/191/H1609>

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<sup>15</sup> An Act To Restore Overtime Protections for Maine Workers, Maine Legislature, H.P. 311, 129<sup>th</sup> Leg. Session, available at [http://legislature.maine.gov/bills/display\\_ps.asp?snum=129&paper=HP0311&PID=1456](http://legislature.maine.gov/bills/display_ps.asp?snum=129&paper=HP0311&PID=1456)

<sup>16</sup> Press Release from Michigan Gov. Gretchen Whitmer, “Governor Whitmer Takes Action to Raise Overtime Pay Threshold for Michigan Workers” (Oct. 24, 2019).