

Proposal to Strengthen Overtime Protection

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On March 27, 2003, the U.S. Department of Labor published a proposal to modernize regulations defining exemptions from the Fair Labor Standards Act (FLSA) for "white-collar" employees. U.S. Secretary of Labor Elaine L. Chao said, "Our proposal will strengthen overtime for the most vulnerable low-wage workers and allow for stronger Department of Labor enforcement of this important worker protection."

Basically, for FLSA exemption purposes, the proposal is designed to update salary levels that have remained unchanged since 1975. Currently, an individual earning as little as \$155 a week can qualify as a white-collar employee not entitled to overtime pay. The Department's proposed regulations would raise the salary threshold--below which workers would automatically qualify for overtime--to \$425 per week. Increasing the minimum salary level would automatically guarantee overtime pay for 1.3 million more low-wage workers.

In addition, the Department's proposal would update the tests for executive, administrative, and professional duties, making entitlement to overtime more certain for 10.7 million workers. The proposed tests are as follows:

- **Executive Duties:** The proposed executive duties test has three requirements: managing the enterprise, directing the work of two or more employees, and having authority to hire or fire (or such recommendations are given particular weight).
- **Administrative Duties:** The proposal would replace the "discretion and independent judgment" test, which has been the subject of litigation, with a new test that employees must hold a "position of responsibility."
- **Professional Duties:** The proposal recognizes as exempt "learned professionals"--certain employees who gain equivalent knowledge and skills through a combination of job experience, military training, attending a technical school, or attending community college.

The Notice of Proposed Rulemaking was published in the Federal Register on Monday, March 31, 2003. It can be accessed with the following links: [\[HTML\]](#), [\[PDF\]](#).