

115TH CONGRESS
1ST SESSION

H. R. 4505

To amend the Fair Labor Standards Act of 1938 to establish a minimum salary threshold for bona fide executive, administrative, and professional employees exempt from Federal overtime compensation requirements, and automatically update such threshold every 3 years.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 30, 2017

Mr. TAKANO (for himself, Mr. BEYER, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. BRADY of Pennsylvania, Mr. COHEN, Mr. CROWLEY, Mr. CUMMINGS, Mr. DANNY K. DAVIS of Illinois, Mr. DELANEY, Ms. DELAURO, Mr. DESAULNIER, Mr. ELLISON, Mr. ESPAILLAT, Mr. GRIJALVA, Mr. GUTIÉRREZ, Ms. KAPTUR, Mr. KHANNA, Ms. LEE, Ms. LOFGREN, Mrs. NAPOLITANO, Ms. NORTON, Mr. PALLONE, Mr. PASCRELL, Mr. POCAN, Mr. POLIS, Ms. SCHAKOWSKY, Mr. SERRANO, Mr. TONKO, Ms. WASSERMAN SCHULTZ, Ms. MAXINE WATERS of California, Mrs. WATSON COLEMAN, Ms. WILSON of Florida, Mr. GENE GREEN of Texas, Mr. CARBAJAL, Mr. SABLAN, Ms. BONAMICI, Mr. SCOTT of Virginia, Mr. NORCROSS, Ms. CLARK of Massachusetts, Ms. ESHOO, Ms. HANABUSA, Ms. JACKSON LEE, Mr. RYAN of Ohio, and Ms. ADAMS) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Fair Labor Standards Act of 1938 to establish a minimum salary threshold for bona fide executive, administrative, and professional employees exempt from Federal overtime compensation requirements, and automatically update such threshold every 3 years.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Restoring Overtime
5 Pay Act of 2017”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The Fair Labor Standards Act of 1938 (29
9 U.S.C. 201 et seq.) established overtime compensa-
10 tion requirements for certain employees when they
11 work more than 40 hours in a given workweek.

12 (2) Under section 13(a)(1) of such Act, Con-
13 gress delegated to the Secretary of Labor the au-
14 thority to define and delimit the terms relating to
15 the exemption for bona fide executive, administra-
16 tive, and professional employees (commonly known
17 as the “white collar exemption”).

18 (3) For more than 75 years, the Secretary of
19 Labor has exercised its delegated authority to issue
20 regulations that define and delimit the terms relat-
21 ing to the white collar exemption by applying a du-
22 ties test and applying a minimum compensation level
23 (or salary threshold).

24 (4) The Secretary of Labor began utilizing a
25 salary threshold in the initial regulations defining

1 and delimiting the terms relating to the white collar
2 exemption, which were first issued in 1938.

3 (5) Congress has long approved the use of a
4 salary threshold by the Secretary of Labor, as dem-
5 onstrated by the fact that Congress has amended the
6 Fair Labor Standards Act of 1938 at least 10 times
7 since 1938 and has not precluded the Secretary
8 from using a salary threshold.

9 (6) The salary threshold became woefully out of
10 date and ineffective as a result of not being suffi-
11 ciently updated to keep pace with a changing econ-
12 omy, as evidenced by the fact that more than 60
13 percent of all full-time salaried workers earned less
14 than the salary threshold in 1975 and less than 7
15 percent of these workers earned less than the salary
16 threshold in 2016.

17 (7) The salary threshold of \$455 per week, or
18 \$23,660 per year, that was in effect on May 22,
19 2016, was below the poverty line for a family of 4.

20 (8) The Secretary of Labor updated the salary
21 threshold on May 23, 2016, through a final rule en-
22 titled “Defining and Delimiting the Exemptions for
23 Executive, Administrative, Professional, Outside
24 Sales and Computer Employees” (81 Fed. Reg.
25 32391) by increasing the salary threshold to the

1 40th percentile of earnings of full-time salaried em-
2 ployees in the lowest-wage Census Region, resulting
3 in a salary threshold of \$913 per week or \$47,476
4 per year.

5 (9) The final rule would benefit more than
6 13,000,000 employees by providing overtime com-
7 pensation protections to 4,200,000 new employees
8 and strengthening overtime compensation protec-
9 tions for 8,900,000 additional employees.

10 (10) The Secretary of Labor went through a
11 thorough process in crafting the final rule, seeking
12 public input and conducting extensive economic anal-
13 ysis, including—

14 (A) spending more than a year meeting
15 with more than 200 interested parties to obtain
16 input before issuing the proposed rule in 2015;

17 (B) considering more than 270,000 com-
18 ments received during the 60-day public com-
19 ment period on the proposed rule; and

20 (C) making significant changes in response
21 to public input before issuing the final rule.

22 (11) The public comments submitted to the
23 Secretary of Labor regarding the proposed rule were
24 overwhelmingly positive and supportive of the rule.

1 (12) The increase in the salary threshold, in-
2 cluded in the final rule, to the 40th percentile of
3 earnings of full-time salaried employees in the low-
4 est-wage Census Region, resulting in a threshold of
5 \$913 per week or \$47,476 per year, was a strong
6 yet measured increase by almost any measure, in-
7 cluding as compared to—

8 (A) the higher salary threshold of \$970 per
9 week or \$50,440 per year, initially put forward
10 by the Secretary of Labor in the proposed rule;

11 (B) the salary threshold of \$984 per week
12 or \$51,168 per year, which would have fully ac-
13 counted for the erosion to the value of the sal-
14 ary threshold since 1975 due to inflation;

15 (C) the salary threshold of \$1,122 per
16 week or \$58,344 per year, which would have
17 covered the same share of all salaried workers
18 as were covered in 1975 after adjusting for the
19 different educational composition of the work-
20 force today; and

21 (D) the salary threshold of \$1,327 per
22 week or \$69,004 per year, which would have
23 covered the same percentage of all salaried
24 workers as were covered in 1975 without ad-

1 justing for the different educational composition
2 of the workforce today.

3 (13) The United States District Court for the
4 Eastern District of Texas erroneously called the au-
5 thority of the Secretary of Labor under the Fair
6 Labor Standards Act of 1938 into question when it
7 issued a preliminary injunction enjoining the De-
8 partment of Labor from enforcing the final overtime
9 rule.

10 (14) The United States District Court for the
11 Eastern District of Texas issued a final decision in-
12 validating the rule, threatening overtime protections
13 for millions of workers.

14 **SEC. 3. MINIMUM SALARY THRESHOLD FOR BONA FIDE EX-**
15 **ECUTIVE, ADMINISTRATIVE, AND PROFES-**
16 **SIONAL EMPLOYEES EXEMPT FROM FEDERAL**
17 **OVERTIME COMPENSATION REQUIREMENTS.**

18 (a) MINIMUM SALARY THRESHOLD FOR BONA FIDE
19 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EM-
20 PLOYEES.—Section 13 of the Fair Labor Standards Act
21 of 1938 (29 U.S.C. 213) is amended—

22 (1) in subsection (a)(1)—

23 (A) by inserting “subsection (k) and” after
24 “subject to”; and

1 (B) by inserting “(except as provided
2 under subsection (k)(3)(C))” after “Administra-
3 tive Procedure Act”; and

4 (2) by adding at the end the following:

5 “(k) MINIMUM SALARY THRESHOLD.—

6 “(1) IN GENERAL.—Beginning on the effective
7 date of the Restoring Overtime Pay Act of 2017, the
8 Secretary shall require that an employee described in
9 subsection (a)(1), as a requirement for exemption
10 under such subsection, be compensated on a salary
11 basis, or equivalent fee basis, within the meaning of
12 such terms in subpart G of part 541 of title 29,
13 Code of Federal Regulations (or any successor regu-
14 lation), at a rate per week that is not less than the
15 salary threshold under paragraph (2).

16 “(2) SALARY THRESHOLD.—

17 “(A) IN GENERAL.—The salary threshold
18 shall be an amount that, subject to subpara-
19 graph (B), is equal to the 40th percentile of
20 earnings of full-time salaried workers in the
21 lowest-wage Census Region as determined by
22 the Bureau of Labor Statistics in accordance
23 with subparagraph (C) and as updated under
24 paragraph (3).

1 “(B) INCREASED THRESHOLD.—The Sec-
2 retary may establish, through notice and com-
3 ment rulemaking under section 553 of title 5,
4 United States Code, a salary threshold that is
5 an amount based on a rate that is greater than
6 the rate described in subparagraph (A) as de-
7 termined by the Bureau of Labor Statistics in
8 accordance with subparagraph (C) and as up-
9 dated under paragraph (3).

10 “(C) AMOUNT DETERMINATIONS.—The
11 amount of the salary threshold determined
12 under subparagraph (A) or (B) shall be based
13 on data from the second quarter of the year
14 preceding the effective date of such amount.

15 “(3) AUTOMATIC UPDATES.—

16 “(A) IN GENERAL.—The Secretary shall
17 update the amount of the salary threshold
18 under paragraph (2) every 3 years so that such
19 amount is based on data from the second quar-
20 ter of the year preceding the effective date of
21 the update.

22 “(B) PUBLICATION OF NOTICE.—Not later
23 than 60 days before the effective date of any
24 update under subparagraph (A), the Secretary
25 shall publish, in the Federal Register and on

1 the internet website of the Department of
2 Labor, a notice announcing the update.

3 “(C) NONAPPLICABILITY OF RULEMAKING
4 REQUIREMENTS.—Any update described in this
5 paragraph shall not be subject to the require-
6 ments for notice and comment rulemaking
7 under section 553 of title 5, United States
8 Code.

9 “(4) DUTIES TEST.—The Secretary shall, in
10 addition to the requirement under paragraph (1),
11 continue to require employees to satisfy a duties
12 test, as prescribed by the Secretary, in defining and
13 delimiting the terms described in subsection (a)(1).”.

14 (b) EFFECTIVE DATE.—This Act, and the amend-
15 ments made by this Act, shall take effect on the date that
16 is 60 days after the date of enactment of this Act.

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