

118TH CONGRESS
1ST SESSION

H. R. 2395

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 each year, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 2023

Mr. TAKANO (for himself 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 each year, and for other purposes.

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 2023”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

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

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

13 (3) For more than 75 years, the Secretary of
14 Labor has exercised the Secretary’s delegated au-
15 thority to issue regulations that define and delimit
16 the terms relating to the white-collar exemption by
17 applying a duties test and applying a minimum com-
18 pensation level (or salary threshold).

19 (4) The Secretary of Labor began utilizing a
20 salary threshold in the initial regulations defining
21 and delimiting the terms relating to the white-collar
22 exemption, which were first issued in 1938.

23 (5) Congress has long approved the use of a
24 salary threshold by the Secretary of Labor, as dem-
25 onstrated by the fact that Congress has amended the
26 Fair Labor Standards Act of 1938 at least 10 times

1 since 1938 and has not precluded the Secretary
2 from using a salary threshold.

3 (6) The salary threshold became woefully out of
4 date and ineffective as a result of not being suffi-
5 ciently updated to keep pace with the changing econ-
6 omy, as evidenced by the fact that 63 percent of all
7 full-time salaried workers were guaranteed overtime
8 pay under section 7 of the Fair Labor Standards
9 Act of 1938 based on their salaries in 1975 while,
10 in 2022, less than 15 percent of all full-time salaried
11 workers are guaranteed such overtime pay under the
12 overtime rule promulgated on September 27, 2019.

13 (7) Weak overtime protections also hurt the
14 many workers who are forced into part-time jobs but
15 need full-time jobs to support themselves and their
16 families. When employers can no longer overwork
17 employees who are exempt from overtime pay be-
18 cause of lax standards, they will be forced to spread
19 work and hours across their workforce. Restoring
20 overtime protections is especially important in 2023,
21 as the economy of the United States is still recov-
22 ering from the pandemic and many workers report
23 their employers demanding excessive hours.

24 (8) In 2015, when the Department of Labor
25 proposed an increase to the overtime salary thresh-

1 old rule under the Obama Administration, it found
 2 that the historic range of the overtime salary thresh-
 3 old under the Fair Labor Standards Act of 1938 ran
 4 from approximately the 35th to the 55th percentile
 5 of weekly earnings for all full-time salaried workers.
 6 By phasing the overtime salary threshold back up to
 7 the 55th percentile of earnings of full-time salaried
 8 workers nationally—which after adjusting for infla-
 9 tion is projected to translate to an annualized
 10 amount of \$73,551 in 2021 and \$82,745 by 2026
 11 (roughly the level of the boldest State overtime
 12 threshold increase)—the United States can restore
 13 overtime protections to historic levels.

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) IN GENERAL.—Section 13 of the Fair Labor
 19 Standards Act of 1938 (29 U.S.C. 213) is amended—

20 (1) in subsection (a)(1)—

21 (A) by inserting “subsection (k) and” after
 22 “subject to”; and

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

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

2 “(k) MINIMUM SALARY THRESHOLD.—

3 “(1) IN GENERAL.—Beginning on the effective
4 date of the Restoring Overtime Pay Act of 2023, the
5 Secretary shall require that an employee described in
6 subsection (a)(1), as a requirement for exemption
7 under such subsection, be compensated on a salary
8 basis, or equivalent fee basis, within the meaning of
9 such terms in subpart G of part 541 of title 29,
10 Code of Federal Regulations (or any successor regu-
11 lation), at a rate per week that is not less than the
12 weekly rate of the applicable annualized salary
13 threshold under paragraph (2).

14 “(2) SALARY THRESHOLD.—

15 “(A) IN GENERAL.—Subject to subpara-
16 graphs (B) and (C), the applicable annualized
17 salary threshold shall be—

18 “(i) \$45,000, beginning on the effec-
19 tive date of the Restoring Overtime Pay
20 Act of 2023;

21 “(ii) \$55,000, beginning on January
22 1, 2024;

23 “(iii) \$65,000, beginning on January
24 1, 2025;

1 “(iv) \$75,000, beginning on January
2 1, 2026; and

3 “(v) beginning on January 1, 2027,
4 an annualized amount that is equal to the
5 rate of the 55th percentile of weekly earn-
6 ings of full-time salaried workers nation-
7 ally, as determined by the Bureau of Labor
8 Statistics based on data from the second
9 quarter of 2026.

10 “(B) INCREASED THRESHOLD.—The Sec-
11 retary may establish, through notice and com-
12 ment rulemaking under section 553 of title 5,
13 United States Code, a salary threshold that is
14 a rate that—

15 “(i) is greater than the applicable
16 annualized salary threshold under subpara-
17 graph (A); and

18 “(ii) is calculated based on a data set
19 and methodology established by the Sec-
20 retary that are capable of being updated in
21 accordance with subparagraph (C).

22 “(C) AUTOMATIC UPDATES.—

23 “(i) IN GENERAL.—Not later than 1
24 year after the salary threshold first takes
25 effect under subparagraph (A)(v), and an-

1 nually thereafter, or, in the case in which
2 the Secretary establishes an increased sal-
3 ary threshold under subparagraph (B), an-
4 nually after establishing such increased
5 salary threshold, the Secretary shall up-
6 date the rate of the salary threshold in ef-
7 fect under subparagraph (A)(v) or (B), as
8 applicable, so that such rate is equal to—

9 “(I) in the case in which the Sec-
10 retary does not establish an increased
11 salary threshold under subparagraph
12 (B), the 55th percentile of weekly
13 earnings of full-time salaried workers
14 nationally, as determined by the Bu-
15 reau of Labor Statistics based on data
16 from the second quarter of the cal-
17 endar year preceding the calendar
18 year in which such updated amount is
19 to take effect; and

20 “(II) in the case in which the
21 Secretary establishes an increased sal-
22 ary threshold under subparagraph
23 (B), the greater of—

24 “(aa) the 55th percentile de-
25 scribed in subclause (I); and

1 “(bb) the increased salary
2 threshold established under sub-
3 paragraph (B), as updated in ac-
4 cordance with the data set and
5 methodology established by the
6 Secretary under subparagraph
7 (B)(ii).

8 “(ii) NONAPPLICABILITY OF RULE-
9 MAKING.—Section 553 of title 5, United
10 States Code, shall not apply to any update
11 described in this subparagraph.

12 “(D) NOTICE REQUIREMENT.—Not later
13 than 60 days before a revised salary threshold
14 under this paragraph takes effect, the Secretary
15 shall publish a notice announcing the amount in
16 the Federal Register and on the internet
17 website of the Department of Labor.”.

18 (b) PUBLICATION OF EARNINGS.—Not later than 21
19 days after the end of each calendar quarter, the Bureau
20 of Labor Statistics shall publish on its public website, for
21 each week of such quarter, data on the weekly earnings
22 of full-time salaried workers by census region (as des-
23 ignated by the Bureau of the Census).

1 **SEC. 4. NONEXEMPT DUTIES LIMIT FOR BONA FIDE EXECU-**
2 **TIVE, ADMINISTRATIVE, OR PROFESSIONAL**
3 **EMPLOYEES.**

4 Section 13(a)(1) of the Fair Labor Standards Act of
5 1938 (29 U.S.C. 213), as amended in section 3(a)(1), is
6 further amended—

7 (1) by striking “of a retail or service establish-
8 ment shall not” and inserting “shall”;

9 (2) by striking “because of” and all that follows
10 through “administrative activities,”;

11 (3) by striking “less than 40” and inserting
12 “not less than 20”; and

13 (4) by striking “such activities” and inserting
14 “activities not directly or closely related to the per-
15 formance of executive or administrative activities”.

16 **SEC. 5. EFFECTIVE DATE.**

17 This Act, and the amendments made by this Act,
18 shall take effect on the first day of the third month that
19 begins after the date of enactment of this Act.

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