

118TH CONGRESS  
1ST SESSION

# S. 1041

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.

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## IN THE SENATE OF THE UNITED STATES

MARCH 29, 2023

Mr. BROWN (for himself, Mr. SCHUMER, Mr. SANDERS, Ms. BALDWIN, Mr. BLUMENTHAL, Mr. BOOKER, Ms. CANTWELL, Mr. CASEY, Ms. DUCKWORTH, Mr. DURBIN, Mr. LUJÁN, Mr. MARKEY, Mr. MERKLEY, Mr. MURPHY, Mrs. MURRAY, Mr. PADILLA, Mr. REED, Mr. SCHATZ, Ms. WARREN, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Restoring Overtime  
3 Pay Act of 2023”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

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

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

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

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

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

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

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

1 ering from the pandemic and many workers report  
2 their employers demanding excessive hours.

3 (8) In 2015, when the Department of Labor  
4 proposed an increase to the overtime salary thresh-  
5 old rule under the Obama Administration, it found  
6 that the historic range of the overtime salary thresh-  
7 old under the Fair Labor Standards Act of 1938 ran  
8 from approximately the 35th to the 55th percentile  
9 of weekly earnings for all full-time salaried workers.  
10 By phasing the overtime salary threshold back up to  
11 the 55th percentile of earnings of full-time salaried  
12 workers nationally—which after adjusting for infla-  
13 tion is projected to translate to an annualized  
14 amount of \$73,551 in 2021 and \$82,745 by 2026  
15 (roughly the level of the boldest State overtime  
16 threshold increase)—the United States can restore  
17 overtime protections to historic levels.

18 **SEC. 3. MINIMUM SALARY THRESHOLD FOR BONA FIDE EX-**  
19 **ECUTIVE, ADMINISTRATIVE, AND PROFES-**  
20 **SIONAL EMPLOYEES EXEMPT FROM FEDERAL**  
21 **OVERTIME COMPENSATION REQUIREMENTS.**

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

24 (1) in subsection (a)(1)—

1 (A) by inserting “subsection (k) and” after  
2 “subject to”; and

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

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

7 “(k) MINIMUM SALARY THRESHOLD.—

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

19 “(2) SALARY THRESHOLD.—

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

23 “(i) \$45,000, beginning on the effec-  
24 tive date of the Restoring Overtime Pay  
25 Act of 2023;

1 “(ii) \$55,000, beginning on January  
2 1, 2024;

3 “(iii) \$65,000, beginning on January  
4 1, 2025;

5 “(iv) \$75,000, beginning on January  
6 1, 2026; and

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

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

19 “(i) is greater than the applicable  
20 annualized salary threshold under subpara-  
21 graph (A); and

22 “(ii) is calculated based on a data set  
23 and methodology established by the Sec-  
24 retary that are capable of being updated in  
25 accordance with subparagraph (C).

1 “(C) AUTOMATIC UPDATES.—

2 “(i) IN GENERAL.—Not later than 1  
3 year after the salary threshold first takes  
4 effect under subparagraph (A)(v), and an-  
5 nually thereafter, or, in the case in which  
6 the Secretary establishes an increased sal-  
7 ary threshold under subparagraph (B), an-  
8 nually after establishing such increased  
9 salary threshold, the Secretary shall up-  
10 date the rate of the salary threshold in ef-  
11 fect under subparagraph (A)(v) or (B), as  
12 applicable, so that such rate is equal to—

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

24 “(II) in the case in which the  
25 Secretary establishes an increased sal-

1                   ary threshold under subparagraph  
2                   (B), the greater of—

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

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

12                             “(ii) NONAPPLICABILITY OF RULE-  
13                             MAKING.—Section 553 of title 5, United  
14                             States Code, shall not apply to any update  
15                             described in this subparagraph.

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

22                             (b) PUBLICATION OF EARNINGS.—Not later than 21  
23                             days after the end of each calendar quarter, the Bureau  
24                             of Labor Statistics shall publish on its public website, for  
25                             each week of such quarter, data on the weekly earnings



1 of full-time salaried workers by census region (as des-  
2 ignated by the Bureau of the Census).

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

6 Section 13(a)(1) of the Fair Labor Standards Act of  
7 1938 (29 U.S.C. 213), as amended in section 3(a)(1), is  
8 further amended—

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

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

13 (3) by striking “less than 40” and inserting  
14 “not less than 20”; and

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

18 **SEC. 5. EFFECTIVE DATE.**

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

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