

In 2019, the Department of Labor (DOL) issued a rule that made it so salaried workers earning less than \$35,568 annually would automatically be owed overtime pay.

A challenge to the Trump-era rule was ultimately rejected by a federal appeals court in September 2024, which upheld DOL's ability to consider a worker's salary level when determining whether they should be exempt from federal overtime pay requirements. As such, the court found that DOL was within its authority under the Fair Labor Standards Act (FLSA) to issue the rule.

Prior to the court's September decision, in April 2024, President Biden's DOL issued a rule to expand overtime eligibility that similarly relies on a salary-level test, updating the salary threshold so that salaried workers making less than \$58,656 are eligible for time-and-a-half wages when they work more than 40 hours a week. This rule, which is undergoing its own legal challenges, is ultimately expected to be reversed by the second Trump administration, in spite of their mutual reliance on salary level methodology.

- Increases to the salary threshold is challenging for smaller employers making tough choices on payroll, staffing, and benefits, especially for those businesses in rural communities or regions with lower costs of living, as well as multi-state Small Businesses paying workers different salaries for different regions.
- Nonprofits and other Small-Business employers lack budgetary flexibility to absorb higher labor costs, forcing them to make tough choices, particularly restaurants and small retailers who often cannot immediately increase revenues to justify a pay increase.
- By the current standards, Small Businesses will sometimes alternate between: a) giving managers a raise and reclassifying them as overtime-eligible, while tracking their hours, with the decision commonly centered around how many employees are affected; or b) provide employees with a salary increase in lieu of a usual bonus.
- Adding an additional layer of concern, federal standards are frequently supplanted by different overtime standards under state or city laws.

Congress must ensure overtime regulations support options for Small Business.

WORKING SOLUTIONS

NSBA continues to urge the Small-Business community to communicate with DOL regarding their experiences and ideas for improvements and protections against excessive wage gaps.

- Hourly reporting and tracking requirements will have a disproportionate burden on smaller firms.
- Increases could force smaller, already-struggling firms to reduce employee hours, as well as damage employee morale for technical downgrades from exempt managers to non-exempt workers.
- Future changes to overtime rules should take the unique circumstances of smaller workforces more fully into consideration.