

# NEWS BRIEF

Provided by: The Baldwin Regulatory Compliance Collaborative

## Proposed Overtime Rule Now Expected in May 2023

Recently, the U.S. Department of Labor (DOL) [communicated](#) it will issue a proposed overtime rule in May 2023, according to its most recent regulatory agenda. The agency originally planned to publish the proposed rule in April 2022 but then delayed it until October 2022. This is the second time the DOL has delayed issuing the proposed overtime rule. Even though the proposed rule is now set to be published in May, it could be delayed again based on the DOL's previous postponements.

While the agency has not yet specified the proposed changes to the rule it may be considering, the proposed overtime rule is expected to address how to implement the exemption of executive, administrative and professional employees from the Fair Labor Standards Act's (FLSA) minimum wage and overtime requirements, according to its regulatory agenda. The DOL has held several calls with industry stakeholders and recently conducted multiple regional listening sessions to gather information.

The agency's communication means employers must wait until May to see how the proposed changes to the rule might impact them in 2023 and beyond. Changes to minimum wage and overtime requirements under the FLSA could impact operational and compliance costs and increase litigation risks for employers.

### What Will the Proposed Overtime Rule Address?

The proposed overtime rule could provide clarity for classifying exempt employees and increasing their salary levels under the FLSA. Some experts believe the DOL may create automatic annual or periodic increases to exempt employees' salary levels by

linking them to the consumer price index, allowing exempt employees' salary thresholds to adjust without formal rule-making.

### What's Next?

Once the DOL publishes a proposed rule in the Federal Register, there will be time designated for the public to comment. The agency will then review the comments and determine whether to move forward with a final rule.

Some experts believe DOL will move quickly once the proposed rule is published in the Federal Register. However, employers are not obligated to change how they classify or pay employees until the DOL's proposed rule becomes final. Potentially impacted employers will want to follow the DOL's rule-making process closely.

Employers should stay tuned for updates from Burnham Benefits Insurance Services but otherwise operate as usual. We will keep you apprised of any notable changes.

