

116TH CONGRESS
1ST SESSION

H. R. 3197

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

JUNE 11, 2019

Mr. TAKANO (for himself, Mr. SCOTT of Virginia, Ms. ADAMS, Ms. WILSON of Florida, Ms. KAPTUR, Ms. WASSERMAN SCHULTZ, Ms. SCHAKOWSKY, Mr. ESPAILLAT, Mr. RYAN, Ms. WATERS, Mr. PALLONE, Mr. PASCRELL, Mr. BRENDAN F. BOYLE of Pennsylvania, Ms. DELAURO, Mr. SERRANO, Mr. GRIJALVA, Ms. BONAMICI, Mr. CUMMINGS, Mr. DESAULNIER, Ms. OMAR, Mr. POCAN, Ms. NORTON, Ms. LEE of California, Mr. THOMPSON of Mississippi, Ms. HAALAND, Ms. JAYAPAL, Mrs. WATSON COLEMAN, Mr. RASKIN, Ms. BARRAGÁN, Mrs. DAVIS of California, Mr. DANNY K. DAVIS of Illinois, Mr. SIRES, Mr. LEVIN of Michigan, Mr. KHANNA, Mr. SMITH of Washington, Ms. TLAIB, Mr. BEYER, Ms. WILD, Ms. MUCARSEL-POWELL, Mr. KENNEDY, Mrs. NAPOLITANO, Mr. NADLER, Mr. COHEN, Mr. PAYNE, Mr. GARCÍA of Illinois, Mr. NORCROSS, and Ms. PRESSLEY) introduced the following bill; which was referred to the Committee on Education and Labor

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 2019”.

6 **SEC. 2. MINIMUM SALARY THRESHOLD FOR BONA FIDE EX-**
 7 **ECUTIVE, ADMINISTRATIVE, AND PROFES-**
 8 **SIONAL EMPLOYEES EXEMPT FROM FEDERAL**
 9 **OVERTIME COMPENSATION REQUIREMENTS.**

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

12 (1) in subsection (a)(1)—

13 (A) by inserting “subsection (k) and” after
 14 “subject to”; and

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

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

19 “(k) MINIMUM SALARY THRESHOLD.—

20 “(1) IN GENERAL.—Beginning on the effective
 21 date of the Restoring Overtime Pay Act of 2019, the
 22 Secretary shall require that an employee described in
 23 subsection (a)(1), as a requirement for exemption
 24 under such subsection, be compensated on a salary
 25 basis, or equivalent fee basis, within the meaning of

1 such terms in subpart G of part 541 of title 29,
2 Code of Federal Regulations (or any successor regu-
3 lation), at a rate per week that is not less than the
4 salary threshold under paragraph (2).

5 “(2) SALARY THRESHOLD.—

6 “(A) IN GENERAL.—Subject to subpara-
7 graphs (B) and (C), the salary threshold shall
8 be an amount that is equal to the 40th per-
9 centile of earnings of full-time salaried workers
10 in the lowest-wage census region, as determined
11 by the Bureau of Labor Statistics based on
12 data from the second quarter of the calendar
13 year preceding the calendar year in which such
14 amount takes effect.

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

20 “(i) is greater than the 40th per-
21 centile of earnings of the full-time salaried
22 workers described in subparagraph (A);
23 and

24 “(ii) is calculated based on a data set
25 and methodology established by the Sec-

retary that are capable of being updated in
accordance with subparagraph (C).

“(C) AUTOMATIC UPDATES.—

“(i) IN GENERAL.—Not later than 3
years after the salary threshold first takes
effect under subparagraph (A), and every
3 years thereafter, or, in the case in which
the Secretary establishes an increased sal-
ary threshold under subparagraph (B),
every 3 years after establishing such in-
creased salary threshold, the Secretary
shall update the amount of the salary
threshold in effect under subparagraph (A)
or (B), as applicable, so that such amount
is equal to—

“(I) in the case in which the Sec-
retary does not establish an increased
salary threshold under subparagraph
(B), the 40th percentile of earnings of
full-time salaried workers in the low-
est-wage census region, as determined
by the Bureau of Labor Statistics
based on data from the second quar-
ter of the calendar year preceding the

1 calendar year in which such updated
2 amount is to take effect; and

3 “(II) in the case in which the
4 Secretary establishes an increased sal-
5 ary threshold under subparagraph
6 (B), the greater of—

7 “(aa) the 40th percentile de-
8 scribed in subclause (I); and

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

16 “(ii) NONAPPLICABILITY OF RULE-
17 MAKING.—Any update described in this
18 subparagraph shall not be subject to the
19 requirements of notice and comment rule-
20 making under section 553 of title 5,
21 United States Code.

22 “(D) NOTICE REQUIREMENT.—Not later
23 than 60 days before a revised salary threshold
24 under this paragraph takes effect, the Secretary
25 shall publish a notice announcing the amount in

1 the Federal Register and on the internet
2 website of the Department of Labor.

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

8 (b) PUBLICATION OF EARNINGS.—Not later than 21
9 days after the end of each calendar quarter, the Bureau
10 of Labor Statistics shall publish on its public website, for
11 each week of such quarter, data on the weekly earnings
12 of nonhourly, full-time salaried workers by census region
13 (as designated by the Bureau of the Census).

14 (c) EFFECTIVE DATE.—This Act, and the amend-
15 ments made by this Act, shall take effect on the first day
16 of the third month that begins after the date of enactment
17 of this Act.

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