

115TH CONGRESS  
1ST SESSION

# S. 2177

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.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 30, 2017

Mr. BROWN (for himself, Mrs. MURRAY, Ms. BALDWIN, Ms. WARREN, Mrs. GILLIBRAND, Mr. DURBIN, Mr. MERKLEY, Mr. BOOKER, Mr. MARKEY, Mr. WHITEHOUSE, Mr. FRANKEN, and Ms. HARRIS) 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 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 2017”.

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 its delegated authority to issue  
15 regulations that define and delimit the terms relat-  
16 ing to the white collar exemption by applying a du-  
17 ties test and applying a minimum compensation level  
18 (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 a changing econ-  
6 omy, as evidenced by the fact that more than 60  
7 percent of all full-time salaried workers earned less  
8 than the salary threshold in 1975 and less than 7  
9 percent of these workers earned less than the salary  
10 threshold in 2016.

11 (7) The salary threshold of \$455 per week, or  
12 \$23,660 per year, that was in effect on May 22,  
13 2016, was below the poverty line for a family of 4.

14 (8) The Secretary of Labor updated the salary  
15 threshold on May 23, 2016, through a final rule en-  
16 titled “Defining and Delimiting the Exemptions for  
17 Executive, Administrative, Professional, Outside  
18 Sales and Computer Employees” (81 Fed. Reg.  
19 32391) by increasing the salary threshold to the  
20 40th percentile of earnings of full-time salaried em-  
21 ployees in the lowest-wage Census Region, resulting  
22 in a salary threshold of \$913 per week or \$47,476  
23 per year.

24 (9) The final rule would benefit more than  
25 13,000,000 employees by providing overtime com-

1       pensation protections to 4,200,000 new employees  
2       and strengthening overtime compensation protec-  
3       tions for 8,900,000 additional employees.

4           (10) The Secretary of Labor went through a  
5       thorough process in crafting the final rule, seeking  
6       public input and conducting extensive economic anal-  
7       ysis, including—

8           (A) spending more than a year meeting  
9       with more than 200 interested parties to obtain  
10      input before issuing the proposed rule in 2015;

11          (B) considering more than 270,000 com-  
12      ments received during the 60-day public com-  
13      ment period on the proposed rule; and

14          (C) making significant changes in response  
15      to public input before issuing the final rule.

16       (11) The public comments submitted to the  
17      Secretary of Labor regarding the proposed rule were  
18      overwhelmingly positive and supportive of the rule.

19       (12) The increase in the salary threshold, in-  
20      cluded in the final rule, to the 40th percentile of  
21      earnings of full-time salaried employees in the low-  
22      est-wage Census Region, resulting in a threshold of  
23      \$913 per week or \$47,476 per year, was a strong  
24      yet measured increase by almost any measure, in-  
25      cluding as compared to—

1 (A) the higher salary threshold of \$970 per  
2 week or \$50,440 per year, initially put forward  
3 by the Secretary of Labor in the proposed rule;

4 (B) the salary threshold of \$984 per week  
5 or \$51,168 per year, which would have fully ac-  
6 counted for the erosion to the value of the sal-  
7 ary threshold since 1975 due to inflation;

8 (C) the salary threshold of \$1,122 per  
9 week or \$58,344 per year, which would have  
10 covered the same share of all salaried workers  
11 as were covered in 1975 after accounting for  
12 changes in the economy; and

13 (D) the salary threshold of \$1,327 per  
14 week or \$69,004 per year, which would have  
15 covered the same percentage of all salaried  
16 workers as were covered in 1975 without ac-  
17 counting for changes in the economy.

18 (13) The United States District Court for the  
19 Eastern District of Texas erroneously called the au-  
20 thority of the Secretary of Labor under the Fair  
21 Labor Standards Act of 1938 into question when it  
22 issued a preliminary injunction enjoining the De-  
23 partment of Labor from enforcing the final overtime  
24 rule.

1           (14) The United States District Court for the  
 2           Eastern District of Texas issued a final decision in-  
 3           validating the rule, threatening overtime protections  
 4           for millions of workers.

5 **SEC. 3. MINIMUM SALARY THRESHOLD FOR BONA FIDE EX-**  
 6 **ECUTIVE, ADMINISTRATIVE, AND PROFES-**  
 7 **SIONAL EMPLOYEES EXEMPT FROM FEDERAL**  
 8 **OVERTIME COMPENSATION REQUIREMENTS.**

9           (a) MINIMUM SALARY THRESHOLD FOR BONA FIDE  
 10 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EM-  
 11 PLOYEES.—Section 13 of the Fair Labor Standards Act  
 12 of 1938 (29 U.S.C. 213) is amended—

13           (1) in subsection (a)(1)—

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

16                   (B) by inserting “(except as provided  
 17           under subsection (k)(3)(C))” after “Administra-  
 18           tive Procedure Act”; and

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

20           “(k) MINIMUM SALARY THRESHOLD.—

21                   “(1) IN GENERAL.—Beginning on the effective  
 22           date of the Restoring Overtime Pay Act of 2017, the  
 23           Secretary shall require that an employee described in  
 24           subsection (a)(1), as a requirement for exemption  
 25           under such subsection, be compensated on a salary

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

6 “(2) SALARY THRESHOLD.—

7 “(A) IN GENERAL.—The salary threshold  
 8 shall be an amount that, subject to subpara-  
 9 graph (B), is equal to the 40th percentile of  
 10 earnings of full-time salaried workers in the  
 11 lowest-wage Census Region as determined by  
 12 the Bureau of Labor Statistics in accordance  
 13 with subparagraph (C) and as updated under  
 14 paragraph (3).

15 “(B) INCREASED THRESHOLD.—The Sec-  
 16 retary may establish, through notice and com-  
 17 ment rule making under section 553 of title 5,  
 18 United States Code, a salary threshold that is  
 19 an amount based on a rate that is greater than  
 20 the rate described in subparagraph (A) as de-  
 21 termined by the Bureau of Labor Statistics in  
 22 accordance with subparagraph (C) and as up-  
 23 dated under paragraph (3).

24 “(C) AMOUNT DETERMINATIONS.—The  
 25 amount of the salary threshold determined

1 under subparagraph (A) or (B) shall be based  
2 on data from the second quarter of the year  
3 preceding the effective date of such amount.

4 “(3) AUTOMATIC UPDATES.—

5 “(A) IN GENERAL.—The Secretary shall  
6 update the amount of the salary threshold  
7 under paragraph (2) every 3 years so that such  
8 amount is based on data from the second quar-  
9 ter of the year preceding the effective date of  
10 the update.

11 “(B) PUBLICATION OF NOTICE.—Not later  
12 than 60 days before the effective date of any  
13 update under subparagraph (A), the Secretary  
14 shall publish, in the Federal Register and on  
15 the internet website of the Department of  
16 Labor, a notice announcing the update.

17 “(C) NONAPPLICABILITY OF RULE MAKING  
18 REQUIREMENTS.—Any update described in this  
19 paragraph shall not be subject to the require-  
20 ments for notice and comment rule making  
21 under section 553 of title 5, United States  
22 Code.

23 “(4) DUTIES TEST.—The Secretary shall, in  
24 addition to the requirement under paragraph (1),  
25 continue to require employees to satisfy a duties



1       test, as prescribed by the Secretary, in defining and  
2       delimiting the terms described in subsection (a)(1).”.

3       (b) EFFECTIVE DATE.—This Act, and the amend-  
4       ments made by this Act, shall take effect on the date that  
5       is 60 days after the date of enactment of this Act.

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