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Jonathan Farrell / Photo by Bob Giglione

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By: [Joseph Kellard](#) July 24, 2015 Comments Off on Proposed overtime rules would impact LI less

While the Obama administration is weighing a proposal that would change labor laws to increase the number of workers eligible for overtime, the impact on Long Island employers is likely to be less than their counterparts in other parts of the state and beyond.

The U.S. Department of Labor plans to increase the standard salary benchmark for full-time salaried workers from the current \$455 a week, or \$23,660 annually, to \$970 per week, or \$50,440 annually, President Barack Obama announced June 30. The proposal would more than double the threshold at which employers can avoid paying overtime. Under current regulations, full-time employees are entitled to 1½ times their regular salary for any hours they work past 40 hours a week. Under the new proposal, salaried workers who earn less than \$50,400 would get paid time-and-a-half overtime wages if they worked more than 40 hours a week. Those employees earning more than the threshold can be denied overtime if they are classified as managers.

Among the workers who would be covered under the new plan are food service managers, supervisors of food preparation and serving workers, retail workers, customer service representatives, legal support workers, counselors and insurance sales agents. Attorney John Ho of [Bond, Schoeneck and King](#), a Garden City-based labor and employment firm, said it is more common in the retail industry to have a front-line supervisor working at a fast food restaurant who earns between \$35,000 and \$45,000 annually.

“Right now, they’re classified as exempt but when these regulations kick in, something will need to be done because they don’t currently meet that proposed salary,” Ho said. “I

think that the primary goal of these regulations really is to increase that base salary in order to be properly classified as exempts.”

In 2004, the DOL issued new regulations to the Fair Labor Standards Act of 1938 for the first time since the 1970s. The DOL looks to revise the overtime provisions for white-collar workers now “to ensure that FLSA’s intended overtime protections are fully implemented and to simplify the identification of overtime-eligible employees, thus making the white-collar exemptions easier for employers and workers to understand,” according to the department. The new standard salary level would be tied to inflation and automatically increase in 10 years, in order to prevent the overtime rules from potentially becoming ineffective.

Currently, 8 percent of full-time salaried workers are eligible for overtime wages. The DOL’s proposal aims to raise the standard salary threshold to the 40th percentile of weekly earnings for salaried workers. While the DOL estimates its proposal would raise wages for 5 million workers, others have reportedly put that figure at 15 million. The new rule could impact nearly 700,000 workers throughout New York, one of the states with a higher benchmark than the federal \$455 a week.

To be exempt as an executive and administrative exempt employee in the state, the rate of pay is at \$656.25, which took effect December 2014. That minimum weekly pay rate has increased in the state in recent years, from \$543.75 starting in July 2009 to \$600 at the end of 2013. The rate is scheduled to increase again to \$675 at the end of this year, but will continue to exclude professionals.

Jonathan Farrell, co-chair of the labor and employment law practice group at [Meltzer Lippe](#) in Mineola, said the average executive and administrative exempt employee in New York already earns about \$35,000 and the proposed federal regulations won’t have the impact here that they will in other states without minimums.

“If you’re in Mississippi, this is going to hurt,” Farrell said. “I don’t think it will have that much of an effect in New York. It’s going to be somewhat of a shock in New York, but not as significant as other parts of the country. It could double for professionals in New York, but what doctor makes \$455 a week?”

Echoing Farrell, Ho said that while the federal plan would still significantly exceed the current state law requirement, salaries are generally higher on Long Island, compared to upstate, but some sectors on the Island may feel some impact.

“Around here, the retail industries probably have a fair amount of these frontline supervisors that may not make the \$50,000,” Ho said. “I think you’re going to see nonprofits who don’t have those salaries – and they are not exempt from these laws – a lot of them are going to look at this and think how this is going to affect their bottom line.”

Critics of the proposal argue that the increase would discourage job creation and hinder economic growth, and some warn that if the revised regulations are enacted that could lead employers to cut the hours of their workers and more full-time positions to part-time, hourly-wage jobs, as well as shift more duties to other workers.

The 60-day period for public comment on the proposal, which doesn’t require congressional approval, is open until September 4. The National Retail Federation last week asked the DOL to extend the comment period an additional 60 days, to Nov. 3. Ho said that many law firms, including his own, submit comments for their clients. The trade associations, whose members would be impacted most by the regulations,

including the retail industries, are likely to weigh in with the position that paying the increased overtime wages is currently unaffordable.

“On the flip side, the workers-rights groups will be saying, ‘Yes, we think this is a very good proposal because it’s going to clearly define the line between who is really, truly a manager and who is being called a manager but being paid less amount of money, not overtime, to sort of circumvent the overtime rules,” Ho said.