

OVERTIME FAQs

What is the overtime threshold?

The overtime threshold determines whether employees are excluded from being paid overtime by their employers. If an employee earns more than a certain amount per week, performs executive, administrative, or professional duties, and is paid a salary, then he or she isn't eligible for overtime pay regardless of hours worked over 40 per week. Currently the overtime pay threshold is \$455 per week, which translates to \$23,660 per year for a full-time, year-round worker.

Why should we raise the threshold?

In the 1970s, 62 percent of workers nationally qualified for overtime based on pay. The last time the salary threshold was raised was in 2004, but even by mid-2000s standards, this was a fairly small increase. That year, 15 percent of Colorado workers qualified based on pay, but by 2018, that number fell to 7.7 percent, or only 80,000 workers across the state.

For workers to be properly compensated for their time and productivity, the overtime threshold must be raised. If the federal government won't do it, then Colorado can and should act.

Why hasn't the federal government acted?

The Obama administration undertook a long and detailed process to update the overtime threshold. In May 2016, the Department of Labor announced it would be updated to \$913 per week, or \$47,476 a year. However, a federal district court in Texas struck that updated rule down in a controversial decision, so it didn't go into effect. The Trump administration said it's interested in an update, most likely with a much lower threshold, but has taken no action yet.

How would this work in Colorado?

The Colorado legislature could pass a bill updating the threshold for overtime with an automatic update tied to inflation, whereby the threshold would increase gradually every few years. If the legislature is unwilling or unable to help increase wages across Colorado, it's within the Governor's authority to do it through an administrative rule issued by the Colorado Department of Labor and Employment.

Have other states done this?

In early 2018, the governor of Pennsylvania moved forward with an increase for his state's overtime salary threshold. Over the course of the next four years, the salary threshold will increase gradually from \$31,720 in 2020 to \$47,892 in 2022, just above the Obama administration's suggested threshold. California is also slowly increasing its salary threshold from \$45,760 in 2018 to \$62,400 in 2022.

Furthermore, three states — Maryland, Rhode Island, and Vermont — currently have bills being debated in their respective legislatures to raise the overtime salary threshold. Other states including Arizona, New Jersey, and Ohio are also expected to move forward with their own versions given a lack of action on the federal level.

How would a new threshold be calculated?

When the Obama administration's Department of Labor undertook the task of updating the overtime threshold, it set it at \$913 per week, or \$47,476 a year, which was the 40th percentile wage for full-time salaried workers in the region with the lowest wages, which at the time was the South.

If Colorado were to use a similar measure for the Western region, it would be \$1,036 per week, or \$53,872 per year. If the 1975 threshold, when 62 percent of workers nationally were covered, was adjusted for inflation it would total \$1,100 per week, or \$57,200 annually.

Possible Salary Threshold for Overtime Pay

	Weekly	Annually
40 th Percentile South Region Salaries, Obama Proposal*	\$913	\$47,476
40 th Percentile Western Region Salaries**	\$1,036	\$53,872
1975 Threshold updated for Inflation to 2017	\$1,100	\$57,200

*2015 salaries ** 2017 salaries

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What types of industries and people would be most impacted by raising the threshold?

Under the Obama administration standard of \$913 per week, nearly 250,000 more Colorado workers would be automatically eligible for overtime protections based on their pay. If Colorado were to use the 40th percentile wage for full-time salaried workers in the Western region of \$1,036 per week, then that number would rise to over 360,000 workers.

While workers of every age would be affected, those aged 16-39 would represent more than half of the new workers covered. According to data from the Economic Policy Institute, workers of all occupations, industries, and races would see increases, and for the most part, it would be in relatively equal ways.

Just as interestingly, college-educated workers would see benefits from the increased salary threshold, but those without a college degree would see the most value from being able to accrue overtime.

What was the point of putting a cap on the amount of money a person could earn and be eligible for overtime pay?

The Fair Labor Standards Act (FLSA), originally passed in 1938, was meant to establish a ceiling on hours worked, a floor on wages earned, and a prohibition on child labor to help families across the United States live a dignified life and support themselves.

Specifically, the threshold was used in conjunction with a duties test to differentiate those workers in executive, administrative, and professional roles from those who weren't. Employees earning below a certain amount were found not likely to be executives, administrators, and/or professionals under the law.

However, as the wage threshold has not kept up with wage growth and inflation, it no longer serves as a differentiation. An increase would restore what was intended under the FLSA.

Would there be any exceptions for places like non-profits or organizations that depend on government contracts or funding?

Non-profit organizations are not generally covered under the FLSA unless they engage in ordinary commercial activities that result in sales made or business done totaling \$500,000 or more per year. These activities could include such things as running a gift shop or selling services. The reasoning behind this is to ensure non-profits engaged in commercial activities don't get an advantage over for-profits that are engaged in similar selling of goods and services.

Activities that are considered charitable, however, are not considered commercial activities, and therefore, would not fall under the FLSA.

However, everyone deserves a living wage and non-profits should be willing to ensure their employees are paid a proper wage, just like everyone else.