

# RESTAURANT BUSINESS

## The Biden administration wants to raise the threshold for overtime pay

**The U.S. Department of Labor is proposing to make salaried employees earning less than \$55,068 eligible for overtime pay, up from \$38,568. The threshold would change every three years.**

By **Peter Romeo**

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Any salaried restaurant employee earning less than \$55,068 a year would be entitled to overtime pay under a regulatory change proposed Wednesday by the U.S. Department of Labor (DOL).

Currently, employers do not have to pay time and a half to salaried workers when they work more than 40 hours per week if their base pay exceeds \$35,568 annually.

The change would raise the overtime cut-off by 55%, or from \$684 per week to \$1,059.

In addition, the proposed rule calls for resetting the exemption threshold every three years to keep pace with changes in compensation levels.

"Restaurant operators are once again feeling the weight of uncertainty because of a Department of Labor change that will increase their operating costs," Sean Kennedy, EVP of public affairs for the National Restaurant Association, said in a statement. "The average small business restaurant runs on a 3-5% margin, but DOL found that the changes proposed in this rule will increase costs for affected restaurants by 2.5% percent. Adding this kind of cost to the already high price of food and years of increasing labor costs will leave many of these operators in the untenable position of raising prices, cutting costs, or closing their doors."

If adopted as currently written, the new regulations would entitle 3.6 million more salaried employees to overtime, according to DOL.

It is not known how many of those 3.6 million work in the restaurant industry. Typically, managers and executive chefs are the only restaurant-level employees to work on salary rather than being paid an hourly wage.

But the industry has been a frequent source of complaints and lawsuits from unit managers who argue that they often perform the same tasks as hourly employees without seeing a bump in pay when their work week exceeds 40 hours. Only those paid on an hourly basis are entitled to time-and-a-half pay.

“For too long, many low-paid salaried workers have been denied overtime pay, even though they often work long hours and perform much of the same work as their hourly counterparts,” Jessica Looman, principal deputy administrator of DOL’s Wage and Hour Division, said in a statement.

Under the federal rule-making process, the public will have 60 days to comment on the proposed changes. DOL will then review the input and publish a final rule.