

113TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To amend the Fair Labor Standards Act of 1938 to establish salary thresholds for and limitations on executive, administrative, and professional employees and address highly compensated employees, for purposes of the requirements for exemption from the Federal minimum wage and maximum hour provisions, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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Mr. HARKIN (for himself, Mrs. MURRAY, Mr. SANDERS, Mr. CASEY, Ms. WARREN, Mr. LEAHY, Mrs. BOXER, Mr. BROWN, and Mr. MARKEY) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend the Fair Labor Standards Act of 1938 to establish salary thresholds for and limitations on executive, administrative, and professional employees and address highly compensated employees, for purposes of the requirements for exemption from the Federal minimum wage and maximum hour provisions, and for other purposes.

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 for Working Americans Act”.

1 **SEC. 2. SALARY THRESHOLDS, HIGHLY COMPENSATED EM-**  
2 **PLOYEES, AND PRIMARY DUTIES.**

3 (a) SALARY THRESHOLDS FOR EXECUTIVE, ADMIN-  
4 ISTRATIVE, AND PROFESSIONAL EMPLOYEES.—Section  
5 13 of the Fair Labor Standards Act of 1938 (29 U.S.C.  
6 213) is amended—

7 (1) in subsection (a)(1), by inserting before “;  
8 or” the following: “, subject to the requirement that  
9 any employee whom the Secretary determines is re-  
10 quired to be paid on a salary (or equivalent fee  
11 basis) in order to be exempt under this subsection  
12 shall, in order to be so exempt, receive compensation  
13 at a rate of not less than the salary rate (or equiva-  
14 lent fee basis) determined under subsection (k)”;  
15 and

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

17 “(k) SALARY RATE (OR EQUIVALENT FEE BASIS).—

18 “(1) IN GENERAL.—The salary rate (or equiva-  
19 lent fee basis) determined under this subsection for  
20 purposes of subsection (a)(1) shall be—

21 “(A) beginning 1 year after the first day  
22 of the first month that begins after the date of  
23 enactment of the Restoring Overtime Pay for  
24 Working Americans Act, \$665 per week;

25 “(B) beginning 2 years after such first  
26 day, \$865 per week;

1           “(C) beginning 3 years after such first  
2           day, \$1,090 per week; and

3           “(D) beginning on the date that is 4 years  
4           after such first day, and on such first day in  
5           each succeeding year, an adjusted amount that  
6           is—

7                   “(i) not less than the amount in effect  
8                   under this paragraph on the day before the  
9                   date of such adjustment;

10                   “(ii) increased from such amount by  
11                   the annual percentage increase in the Con-  
12                   sumer Price Index for Urban Wage Earn-  
13                   ers and Clerical Workers; and

14                   “(iii) rounded to the nearest multiple  
15                   of \$1.00.

16           “(2) SPECIAL RULE.—Notwithstanding para-  
17           graph (1), for any employee for whom the minimum  
18           wage would otherwise be determined pursuant to  
19           section 8103(b) of the Fair Minimum Wage Act of  
20           2007 (29 U.S.C. 206 note), the Secretary may de-  
21           termine, through regulations, the salary rate (or  
22           equivalent fee basis).

23           “(1) PRIMARY DUTY.—In any case where an employer  
24           classifies an employee as an employee employed in a bona  
25           fide executive, administrative, or professional capacity, for

1 the purpose of subsection (a)(1), or in a position described  
2 in subsection (a)(17), for the purpose of such subsection,  
3 such employee shall not spend more than 50 percent of  
4 such employee's work hours in a workweek on duties that  
5 are not exempt under paragraph (1) or (17) of subsection  
6 (a), respectively.

7 “(m) DEFINITIONS.—For the purposes of this sec-  
8 tion:

9 “(1) ANNUAL PERCENTAGE INCREASE.—The  
10 term ‘annual percentage increase’, when used in ref-  
11 erence to the Consumer Price Index for Urban Wage  
12 Earners and Clerical Workers, means the annual  
13 percentage increase calculated by the Secretary by  
14 comparing such Consumer Price Index for the most  
15 recent month, quarter, or year available (as selected  
16 by the Secretary prior to the first year for which a  
17 minimum wage is in effect pursuant to this sub-  
18 section) with such Consumer Price Index for the  
19 same month in the preceding year, the same quarter  
20 in the preceding year, or the preceding year, respec-  
21 tively.

22 “(2) CONSUMER PRICE INDEX FOR URBAN  
23 WAGE EARNERS AND CLERICAL WORKERS.—The  
24 term ‘Consumer Price Index for Urban Wage Earn-  
25 ers and Clerical Workers’ means the Consumer Price

1 Index for Urban Wage Earners and Clerical Work-  
2 ers (United States city average, all items, not sea-  
3 sonally adjusted), or its successor publication, as de-  
4 termined by the Bureau of Labor Statistics.”.

5 (b) HIGHLY COMPENSATED EMPLOYEES.—

6 (1) IN GENERAL.—If the Secretary of Labor, in  
7 the discretion of such Secretary, determines that an  
8 employee may be exempt for purposes of section  
9 13(a)(1) of the Fair Labor Standards Act of 1938  
10 (29 U.S.C. 213(a)(1)), as a highly compensated em-  
11 ployee (as such term is defined and delimited by the  
12 Secretary), then the level of total annual compensa-  
13 tion necessary for such exemption shall be—

14 (A) beginning 1 year after the first day of  
15 the first month that begins after the date of en-  
16 actment of this Act, \$108,000;

17 (B) beginning 2 years after such first day,  
18 \$116,000;

19 (C) beginning 3 years after such first day,  
20 \$125,000; and

21 (D) beginning on the date that is 4 years  
22 after such first day, and for each succeeding  
23 calendar year, an adjusted amount that is—

1 (i) not less than the amount in effect  
2 under this paragraph on the day before the  
3 date of such adjustment;

4 (ii) increased from such amount by  
5 the annual percentage increase in the Con-  
6 sumer Price Index for Urban Wage Earn-  
7 ers and Clerical Workers; and

8 (iii) rounded to the nearest multiple of  
9 \$1.00.

10 (2) RULE OF CONSTRUCTION.—Nothing in this  
11 subsection or the regulations promulgated by the  
12 Secretary of Labor under this subsection shall over-  
13 ride any provision of a collective bargaining agree-  
14 ment that provides for overtime employment com-  
15 pensation, or rights to such compensation, that ex-  
16 ceed the requirements of the Fair Labor Standards  
17 Act of 1938 (29 U.S.C. 201 et seq.).

18 (3) DEFINITIONS.—For purposes of this sub-  
19 section, the terms “annual percentage increase” and  
20 “Consumer Price Index for Urban Wage Earners  
21 and Clerical Workers” have the meanings given the  
22 terms in section 13(m) of the Fair Labor Standards  
23 Act of 1938 (29 U.S.C. 213(m)), as added by sub-  
24 section (a).

25 (c) PUBLICATION OF NOTICE.—

1           (1) IN GENERAL.—Not later than 60 days be-  
2 fore the effective date of any adjustment in the sal-  
3 ary rate (or equivalent fee basis) required under sec-  
4 tion 13(k)(1)(D) of the Fair Labor Standards Act of  
5 1938 (29 U.S.C. 213(k)(1)(D)), as added by sub-  
6 section (a), or any adjustment in the amount of  
7 compensation required for the highly compensated  
8 employee exemption required under subsection (b),  
9 the Secretary of Labor shall publish, in the Federal  
10 Register and on the website of the Department of  
11 Labor, a notice announcing the adjusted salary rate  
12 (or equivalent fee basis) or adjusted amount of com-  
13 pensation, respectively.

14           (2) NONAPPLICABILITY OF RULEMAKING RE-  
15 QUIREMENTS.—The provisions of section 553 of title  
16 5, United States Code, shall not apply to any notice  
17 required under this subsection.

18           (d) PENALTIES.—Section 16(e)(2) of the Fair Labor  
19 Standards Act of 1938 (29 U.S.C. 216(e)(2)) is amended  
20 by inserting “or section 11(c), relating to the records that  
21 each employer is required to make, keep, and preserve,”  
22 after “relating to wages,”.

23           (e) EFFECTIVE DATE.—This Act, and the amend-  
24 ments made by this Act, shall take effect on the date that

- 1 is 1 year after the first day of the first month that begins
- 2 after the date of enactment of this Act.