II

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.

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Restoring Overtime Pay Act of 2017''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) established overtime compensation requirements for certain employees when they work more than 40 hours in a given workweek.

(2) Under section 13(a)(1) of such Act, Congress delegated to the Secretary of Labor the authority to define and delimit the terms relating to the exemption for bona fide executive, administrative, and professional employees (commonly known as the ‘‘white collar exemption’’).

(3) For more than 75 years, the Secretary of Labor has exercised its delegated authority to issue regulations that define and delimit the terms relating to the white collar exemption by applying a duties test and applying a minimum compensation level (or salary threshold).

(4) The Secretary of Labor began utilizing a salary threshold in the initial regulations defining and delimiting the terms relating to the white collar exemption, which were first issued in 1938.

(5) Congress has long approved the use of a salary threshold by the Secretary of Labor, as demonstrated by the fact that Congress has amended the Fair Labor Standards Act of 1938 at least 10 times

since 1938 and has not precluded the Secretary from using a salary threshold.

(6) The salary threshold became woefully out of date and ineffective as a result of not being sufficiently updated to keep pace with a changing economy, as evidenced by the fact that more than 60 percent of all full-time salaried workers earned less than the salary threshold in 1975 and less than 7 percent of these workers earned less than the salary threshold in 2016.

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

(8) The Secretary of Labor updated the salary threshold on May 23, 2016, through a final rule entitled ''Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees'' (81 Fed. Reg. 32391) by increasing the salary threshold to the 40th percentile of earnings of full-time salaried employees in the lowest-wage Census Region, resulting in a salary threshold of $913 per week or $47,476 per year.

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

pensation protections to 4,200,000 new employees and strengthening overtime compensation protections for 8,900,000 additional employees.

(10) The Secretary of Labor went through a thorough process in crafting the final rule, seeking public input and conducting extensive economic analysis, including—

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

(B) considering more than 270,000 comments received during the 60-day public comment period on the proposed rule; and

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

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

(12) The increase in the salary threshold, included in the final rule, to the 40th percentile of earnings of full-time salaried employees in the lowest-wage Census Region, resulting in a threshold of $913 per week or $47,476 per year, was a strong yet measured increase by almost any measure, including as compared to—

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

(B) the salary threshold of $984 per week or $51,168 per year, which would have fully accounted for the erosion to the value of the salary threshold since 1975 due to inflation;

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

(D) the salary threshold of $1,327 per week or $69,004 per year, which would have covered the same percentage of all salaried workers as were covered in 1975 without accounting for changes in the economy.

(13) The United States District Court for the Eastern District of Texas erroneously called the authority of the Secretary of Labor under the Fair Labor Standards Act of 1938 into question when it issued a preliminary injunction enjoining the Department of Labor from enforcing the final overtime rule.

(14) The United States District Court for the Eastern District of Texas issued a final decision invalidating the rule, threatening overtime protections for millions of workers.

SEC. 3. MINIMUM SALARY THRESHOLD FOR BONA FIDE EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES EXEMPT FROM FEDERAL OVERTIME COMPENSATION REQUIREMENTS.

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

(1) in subsection (a)(1)—

(A) by inserting "subsection (k) and" after "subject to"; and

(B) by inserting "(except as provided under subsection (k)(3)(C))" after "Administrative Procedure Act"; and

(2) by adding at the end the following:

"(k) MINIMUM SALARY THRESHOLD.—

"(1) IN GENERAL.—Beginning on the effective date of the Restoring Overtime Pay Act of 2017, the Secretary shall require that an employee described in subsection (a)(1), as a requirement for exemption under such subsection, be compensated on a salary basis, or equivalent fee basis, within the meaning of such terms in subpart G of part 541 of title 29, Code of Federal Regulations (or any successor regulation), at a rate per week that is not less than the salary threshold under paragraph (2).

"(2) SALARY THRESHOLD.—

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

"(B) INCREASED THRESHOLD.—The Secretary may establish, through notice and comment rule making under section 553 of title 5, United States Code, a salary threshold that is an amount based on a rate that is greater than the rate described in subparagraph (A) as determined by the Bureau of Labor Statistics in accordance with subparagraph (C) and as updated under paragraph (3).

"(C) AMOUNT DETERMINATIONS.—The amount of the salary threshold determined under subparagraph (A) or (B) shall be based on data from the second quarter of the year preceding the effective date of such amount.

"(3) AUTOMATIC UPDATES.—

"(A) IN GENERAL.—The Secretary shall update the amount of the salary threshold under paragraph (2) every 3 years so that such amount is based on data from the second quarter of the year preceding the effective date of the update.

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

"(C) NONAPPLICABILITY OF RULE MAKING REQUIREMENTS.—Any update described in this paragraph shall not be subject to the requirements for notice and comment rule making under section 553 of title 5, United States Code.

"(4) DUTIES TEST.—The Secretary shall, in addition to the requirement under paragraph (1), continue to require employees to satisfy a duties test, as prescribed by the Secretary, in defining and delimiting the terms described in subsection (a)(1).''.

(b) EFFECTIVE DATE.—This Act, and the amendments made by this Act, shall take effect on the date that is 60 days after the date of enactment of this Act.

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