

November 7, 2023

Division of Regulations, Legislation, and Interpretation  
Wage and Hour Division  
U.S. Department of Labor  
Room S-3502,  
200 Constitution Avenue NW  
Washington, DC 20210

Re: RIN 1235-AA39—Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees

To Whom It May Concern:

On behalf of our 159,000 members, we respectfully urge the Department of Labor to reconsider its economically significant proposal to expand overtime eligibility to low-salaried workers. We offer these comments in response to your Federal Register notice of September 8, 2023 (88 FR 62152).

Under the Fair Labor Standards Act, the Department of Labor uses several standards—including a minimum salary threshold and a standard duties test—to determine whether salaried workers are eligible for overtime pay. Salaried workers who meet or exceed those thresholds are “exempt” from overtime pay; workers who do not may be eligible.

The Department is proposing to increase the minimum salary threshold from the \$35,568 (\$684 per week) to \$55,068 (\$1,059 per week). Salaried workers earning less than \$55,068 (\$1,059 per week) would thus be eligible for overtime pay in dental practices with over \$500,000 in annual dollar volume. This is a nearly 55 percent increase of the minimum salary threshold.

Factoring out the employer’s annual dollar volume, this proposal would extend overtime eligibility to most dental assistants and dental laboratory technicians. More than 75 percent of dental assistants earn less than \$48,870 annually (\$940.00 per week).<sup>1</sup> Over half of dental laboratory technicians earn less than \$46,050 annually (\$885.60 per week).<sup>2</sup> Most dentists and dental hygienists would not be affected.

Around 20 percent of dental practices have over \$500,000 in annual dollar volume and would be affected by this rule, based on responses from our volunteer leaders. After-hours emergencies and other patient problems make working hours unpredictable. Dental practices also cannot absorb heightened labor costs through price increases. Rates are often fixed by third-party payers. Even if they could, higher prices could be detrimental to the millions of Americans already struggling to pay for the dental care they need.

Note that dentists are already using pay increases as one of several strategies to alleviate widespread workforce shortages. For example, around 26 percent of dentists report that staffing shortages are preventing their practice from reaching 100 percent capacity. Over 35

percent are actively recruiting dental assistants, and over 83 percent report that filling those positions is very or extremely challenging. At the same time, nearly 40 percent report increasing pay by over 9 percent in the last year. The trend is likely to continue.<sup>3</sup>

Thank you for providing us the opportunity to comment. If you have any questions, please contact Mr. Robert J. Burns at 202-789-5176 or [burnsr@ada.org](mailto:burnsr@ada.org).

Sincerely,

/s/

Linda J. Edgar, D.D.S., M.Ed.  
President

/s/

Raymond A. Cohlmlia, D.D.S.  
Executive Director

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<sup>1</sup> Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wages, May 2022, Dental Assistants, at <https://www.bls.gov/oes/current/oes319091.htm>. Accessed October 5, 2023.

<sup>2</sup> Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wages, May 2022, Dental Laboratory Technicians, at <https://www.bls.gov/oes/current/oes519081.htm>. Accessed October 5, 2023.

<sup>3</sup> American Dental Association Health Policy Institute. Economic outlook and emerging issues in dentistry, September 2023, at <https://www.ada.org/resources/research/health-policy-institute/economic-outlook-and-emerging-issues>. Accessed October 5, 2023.