



Department of Labor Issues Final Rule on Overtime Exemptions for White Collar Workers

On May 18, 2016, the U.S. Department of Labor (DOL) published regulations that will significantly raise the salary threshold that helps determine whether workers are eligible for overtime pay. Beginning December 1, 2016 — the effective date of the changes — the “white collar” exemption salary level will increase from \$455 per week (\$23,660 per year) to \$913 per week (\$47,476 per year) under the Fair Labor Standards Act (FLSA). The DOL will update the salary and compensation levels every three years to match the 40th percentile of earnings in the lowest-wage Census region, currently the South.

The DOL had not adjusted the salary level since 2004, and the Obama administration determined that the current salary level is outdated and no longer effective in separating those who should and shouldn't be entitled to overtime. The regulations will automatically extend overtime pay protection to over four million workers within the first year of implementation.

Final Rule Changes Salary Level Test

The Fair Labor Standards Act requires employers to pay employees time-and-a-half for any time worked in excess of 40 hours per week unless they fall under specific exemptions. While there are many exemptions to the overtime requirements under the FLSA, the new regulations focus on the white collar exemptions: executive, administrative, and professional exemptions. These categories of employees are exempted from overtime requirements if they satisfy the following three tests:

- (1) **Salary Basis Test:** To qualify for exemption, employees generally must be on a salary basis.
- (2) **Salary Level Test:** The salary amount meets the minimum specified amount; and with very limited exceptions, the employer must pay employees their full salary in any week they perform work, regardless of the quality or quantity of the work. The Final Rule raises the annual salary minimum from \$23,660 annually to \$47,476 for executive, administrative, or professional employees.
- (3) **Duties Test:** The employee's job duties must meet certain criteria as defined by the regulations. The Final Rule will not change the existing duty requirements.

Highly Compensated Employees (HCE)

The FLSA also provides an overtime exemption to highly compensated employees whose primary duties include performing office or non-manual work and who customarily and regularly perform one of the exempt duties of an executive, administrative, or professional (EAP) employee. The total annual compensation requirement for the HCE exemption will rise from \$100,000 to \$134,004. This compensation level is based on the 90th percentile of earnings for full-time salaried workers nationally. The threshold compensation requirement will be automatically updated every three years to continue to correspond to the 90th percentile.



Nondiscretionary Bonuses and Incentive Payments

Employers will be able to apply up to 10% of a worker's nondiscretionary bonuses and incentive payments (including commissions) to satisfy the standard salary level required for exemption. This provision does not apply to HCEs.

Next Steps for Employers

The Final Rule becomes effective on December 1, 2016, which allows employers a little over six months to make the necessary changes to comply with the new requirements.

1. Review your job descriptions now to determine whether they are still accurate and reflect the job being performed and the skills needed to perform the job. Review employees' actual job duties to ensure that they still fall within the administrative, executive, professional, computer, or outside sales exemptions.
2. Review current employee classifications to ensure that your "non-exempt" employees are properly classified; if they pass the salary basis and duties tests, but are paid less than \$913 per week, then effective December 1, 2016, they must be reclassified as "non-exempt" and must be paid at least the minimum wage and overtime in accordance with federal and state law. Employees who are paid a salary of at least \$913 per week and perform job duties that fall within administrative, executive, professional, computer, or outside sales categories may be classified as "exempt."
3. Identify which employees meet the "exempt" classification under the administrative, executive, professional, computer, or outside sales exemptions. Then determine which employees now make at least the current minimum of \$23,660, but less than the proposed minimum of \$47,476 per year. Determine how many hours they typically work per week and factor in any fluctuations in hours during peak periods.
4. Weigh the costs of raising employees' salaries to meet the proposed exemption criteria against what it would cost to reclassify them as non-exempt and pay them overtime when they work more than 40 hours a week. To help you better understand the potential labor costs of the changes, refer to ADP's [online calculators](#). These are designed to provide businesses with a simple assessment of the annual impact at the federal level of paying overtime versus raising salaries to meet the new salary threshold of \$47,476 per year.
5. Beyond the costs of raising "exempt" employees' salaries, consider the impact on internal pay equity. Internal equity means employees are paid fairly when compared with other employees within your company. If you substantially increase some employees' pay, other employees may have questions about why their pay isn't increasing. You may also want to consider state equal pay laws, such as in California and New York, which both recently passed legislation requiring employers to provide equal pay to men and women; Massachusetts is considering passing similar legislation soon.
6. Consider implementing a Time and Attendance system now to help manage overtime tracking and labor costs and to protect your bottom line. If you are an HR Knowledge current client, please email us at sales@HRKnowledge.com for pricing.
7. Update your current policies and evaluate your timekeeping, overtime, telecommuting, mobile device, meal and rest breaks, training, and travel policies and practices.
8. When evaluating your employees' status, keep in mind that not every employee who receives a salary is automatically exempt — they must also perform exempt duties. You should assess an employee's day-to-day duties to determine whether or not those duties fall within the FLSA's exemption requirements. There will likely be some employees that fall into a "gray area," whose status will not



be easy to determine. In such cases, we suggest erring on the side of non-exempt status, keeping in mind that the employer bears the “burden of proof” that an employee is exempt from overtime.

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