

DOL Overtime Final Rule

Effective Date December 1, 2016

On May 18, 2016, the Department of Labor released its final rule amending the tests for the white collar exemptions from the minimum wage and overtime requirements of the Fair Labor standards Act (FLSA).

Final rule at a glance:

- Effective date: December 1, 2016
- \$47,476/year or \$913/week salary for Executive, Administrative, Professional (EAP) and Computer exemptions
- \$134,004/year for highly compensated employee (HCE) exemptions
- Inclusion of nondiscretionary incentive payments in salary
- Automatic update every three years beginning on January 1, 2020
- No changes to the duties tests

Background:

The Fair Labor Standards Act (FLSA) requires employees to be paid the federal minimum wage and overtime (1 ½ times their regular rate) for time worked in excess of 40 hours in a week. The law provides exemptions from these requirements for certain groups of employees. The most commonly used exemption is for employees working in jobs that the FLSA describes as executive, administrative, or professional (AKA: “white collar” or EAP exemptions). To qualify for these EAP exemptions, employees must satisfy three tests:

1. The employee must be paid on a salary basis;
2. The employee must receive a specified salary level set by the DOL; and
3. The employee must perform duties established by the DOL (AKA: duties tests)

Important to note:

Employees must satisfy all three tests to be exempt from overtime. EVEN if employees earn \$47,476/year or \$913/week, they must still meet the duties test for the relevant exemptions. For more on the DOL’s compliance guidelines, link to: ["Small Entity Compliance Guide to the FLSA's White Collar Exemptions"](#) or ["Guidance to Nonprofit organizations on Paying Overtime"](#)

Summary of the Final Rule:

New Salary Level

EAP/Computer exemptions. The final rule establishes a new salary level test for the EAP and computer exemptions at \$47,476 annually or \$913 per week for a full-time employee. This is more than double the current level.

Highly Compensated Employee exemption. The final rule sets the salary level for the HCE exemption at \$134,004, a significant increase from the current salary level of \$100,000.

Nondiscretionary Bonuses and Incentive Payments. The final rule permits employers to satisfy up to 10 percent of the standard salary level with nondiscretionary bonuses, incentive payments and commissions that are paid at least quarterly. Note: additional rules apply when utilizing these forms of payments to satisfy the new rule.

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Automatic Adjustments

Under the final rule, the DOL will automatically adjust the salary level every three years. Note: an earlier proposal allowed the DOL to make such adjustments annually. The DOL will announce increases to the salary level 150 days prior to the effective date so the first automatic adjustment will be announced by August 4, 2019 for the January 1, 2020 effective date.

Duties Tests

The DOL did not change any of the existing duties tests for the EAP, HCE or Computer exemptions.

Next Steps:

If you have not begun to review your employee classifications, make it a priority. Once you have determined which jobs are exempt and which are non-exempt, you have several choices to make; those listed below are acceptable under the FLSA:

- Increase the salary level to maintain the exemption. Expensive. But overtime is not an issue
- Divide the current salary by 40 hours and switch to paying at an hourly rate. Overtime then becomes an issue
- Convert an employee from salaried to hourly, based on actual hours worked, so the net cost is the same
- Convert an employee from salaried exempt to salaried nonexempt and pay overtime for excess hours

Update policies and maintain accurate records

In any case where employees are eligible for overtime, accurate information about hours worked is essential. Review overtime and benefit policies and pay special attention to the implications for electronic devices. For example: if employees use personal devices i.e.: smart phones, tablets, etc. for work, create and communicate crystal clear policies indicating what is/is not compensable time.

Communicating decisions to employees

Exempt employees who are changed to nonexempt and have to begin tracking their time may feel as if they're being demoted. Communicating well in advance of the December 1 effective date may help to ease those feelings – especially if employees understand that the change was initiated by the DOL's new rule.

Training

Once decisions have been made and policies and/or systems amended if necessary, employers should plan to train managers and supervisors on proper time tracking, overtime, efficient and effective scheduling and the use of electronic devices after hours