

BREAKING EMPLOYMENT LAW NEWS: INCREASED SALARY THRESHOLD FOR OVERTIME EXEMPTION

This morning, May 18, 2016, the long-anticipated amendment to the Fair Labor Standards Act (FLSA) was issued increasing the minimum salary to \$47,476 per year for employees to qualify for overtime exemption under the “white collar” exemptions (Executive, Administrative, and Professional Exemptions). The new salary threshold will go into effect on December 1, 2016, which means employers have a little more than six months to make adjustments for their exempt employees who currently earn less than the \$47,476 per year salary threshold. The increase is significantly lower than the Department of Labor initially proposed, but it will nevertheless impact millions of employees.

Key Points:

- This change imposes a higher threshold for employers under federal law than currently exists under California law, which is unusual. The current law in California is that “white collar” exempt employees must earn a minimum of two times the state minimum wage assuming a full-time schedule ($\$10 \text{ per hour} \times 2080 \text{ hours} \times 2 = \$41,600$). As of December 1, 2016, the federal threshold will be higher, at \$47,476 per year.
- To qualify for an overtime exemption, employees must satisfy both a “salary test” as well as a “duties test.” The FLSA amendment increases employer’s burden under the “salary test,” but the “duties test” for the exemptions will not change.
- Employers with exempt employees who currently earn a salary of at least \$41,600 but less than \$47,476 have three basic options: (1) increase salaries to satisfy the new threshold, (2) convert the employees from exempt to non-exempt, which will then make them eligible for overtime pay and meal/rest breaks, or (3) increase salaries to at least \$42,728.40 and ensure the employees receive sufficient additional nondiscretionary bonuses or incentive payments (including commissions) to meet or exceed the \$47,476 threshold.
- The new FLSA salary threshold does not apply to lawyers, doctors, or teachers. For exempt employees working in those occupations, employers simply need to continue complying with the California standard of at least \$41,600.
- The FLSA salary test will be reviewed and adjusted every three years to track market changes. The first adjustment will occur on January 1, 2020.

The DOL’s description of the new FLSA rule is below, with links to fact sheets, guide books, and DOL webinars intended to help educate employers and employees and ensure compliance.

Hoge Fenton's Employment Law Team will discuss this and other significant changes in employment law in greater detail as part of our Annual Employment Law Update in January. In the meantime, please feel free to contact us should you need assistance in understanding and complying with this significant change in the law.

Wage and Hour Division (WHD) - United States Department of Labor

Final Rule: Overtime

Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees under the Fair Labor Standards Act

On May 18, 2016, President Obama and Secretary Perez announced the publication of the Department of Labor's final rule updating the overtime regulations, which will automatically extend overtime pay protections to over 4 million workers within the first year of implementation. This long-awaited update will result in a meaningful boost to many workers' wallets, and will go a long way toward realizing President Obama's commitment to ensuring every worker is compensated fairly for their hard work.

In 2014, President Obama signed a Presidential Memorandum directing the Department to update the regulations defining which white collar workers are protected by the FLSA's minimum wage and overtime standards. Consistent with the President's goal of ensuring workers are paid a fair day's pay for a hard day's work, the memorandum instructed the Department to look for ways to modernize and simplify the regulations while ensuring that the FLSA's intended overtime protections are fully implemented.

The Department published a Notice of Proposed Rulemaking (NPRM) in the Federal Register on July 6, 2015 (80 FR 38515) and invited interested parties to submit written comments on the proposed rule at **www.regulations.gov** by September 4, 2015. The Department received over 270,000 comments in response to the NPRM from a variety of interested stakeholders. The feedback the Department received helped shape the Final Rule.

Key Provisions of the Final Rule

The Final Rule focuses primarily on updating the salary and compensation levels needed for Executive, Administrative and Professional workers to be exempt. Specifically, the Final Rule:

1. Sets the standard salary level at the 40th percentile of earnings of full-time salaried workers in the lowest-wage Census Region, currently the South (\$913 per week; \$47,476 annually for a full-year worker);
2. Sets the total annual compensation requirement for highly compensated employees (HCE) subject to a minimal duties test to the annual equivalent of the 90th percentile of full-time salaried workers nationally (\$134,004); and
3. Establishes a mechanism for automatically updating the salary and compensation levels every three years to maintain the levels at the above percentiles and to ensure that they continue to provide useful

and effective tests for exemption.

Additionally, the Final Rule amends the salary basis test to allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the new standard salary level.

The effective date of the final rule is December 1, 2016. The initial increases to the standard salary level (from \$455 to \$913 per week) and HCE total annual compensation requirement (from \$100,000 to \$134,004 per year) will be effective on that date. Future automatic updates to those thresholds will occur every three years, beginning on January 1, 2020.

Although the Office of Management and Budget (OMB) has reviewed and approved the Final Rule, the document has not yet been published in the Federal Register. The Final Rule that appears in the Federal Register may contain minor formatting differences in accordance with Office of the Federal Register publication requirements. The OMB-approved version is being provided as a convenience to the public and this website will be updated with the Federal Register's published version when it becomes available.

Informational Webinars on the Overtime Final Rule [Register Here](#)

Additional Information

- **Final Rule**
- **Overtime Overview**
- **Questions and Answers**

Fact Sheet:

- **Overtime Final Rule (PDF)**
- **Final Rule: Non-Profit**
- **Final Rule: Higher Education**
- **Final Rule: States and Local Governments**

Guidance for Businesses

- **General Guidance**
- **Non-Profit Guidance**
- **Higher Education Guidance**
- **Comparison Table: Current Regulations, Proposed Rule, and Final Rule**
- **Small Business Guide**
- **DOL Overtime Page**

- **Overtime NPRM Page**

Blog Posts

- **DOL Blog: Who Benefits from the New Overtime Rule (May 18, 2016)**
- **DOL Blog: Plenty of Options with New Overtime Rule (May 18, 2016)**
- **Huffington Post: Fair Pay for Postdocs: Why We Support New Federal Overtime Rules (May 17, 2016)**
- **Non-Enforcement policy for providers of Medicaid-funded services for individuals with intellectual or developmental disabilities in residential homes and facilities with 15 or fewer beds**

Primary Contact

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