



Eye On Washington

Legislative Update



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DOL Releases Changes to FLSA Overtime Rules

On May 18, 2016, the United States Department of Labor (DOL) published regulations that will modify certain provisions of the Fair Labor Standards Act (FLSA). Specifically, the regulations increase the minimum salary required to be earned by an employee in order for that employee to be exempt from FLSA overtime requirements. The changes will take effect on December 1, 2016.

Background

The FLSA requires *virtually* all employers to pay most employees at least the federal minimum wage for each hour worked, as well as overtime pay for all hours worked in excess of 40 in a workweek. The FLSA allows for **exemptions** from these overtime and minimum wage requirements for certain employees who work in administrative, professional, executive, highly compensated, outside sales, and computer professional jobs. These employees are known as “exempt” employees. To be considered “exempt,” these employees must generally satisfy three tests that focus on how the employee is paid and the type of job duties the employee performs:

- **Salary-level test:** Employers must pay employees a minimum salary requirement to qualify for the executive, administrative, and professional employee exemptions.
- **Salary-basis test:** Employees must receive a predetermined amount of compensation each pay period, on a weekly or less frequent basis. 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.
- **Duties test:** The employee’s primary duties must meet certain criteria.

There is also an exemption for “highly compensated” employees. These employees are exempt from the FLSA’s overtime requirements if they customarily and regularly perform at least one of the exempt duties or responsibilities of an executive, administrative, or professional employee, and meet the salary threshold for highly compensated employees.

Note: Most employees are not considered “exempt” from the FLSA’s minimum wage and overtime requirements and are classified as “nonexempt.” Employers must pay “nonexempt” employees at least the minimum wage for each hour worked as well as overtime pay of at least one and one-half the regular rate for all hours worked in excess of 40 in a workweek. Keep in mind your state may have minimum wage and overtime requirements beyond what is required by the FLSA.

Changes: Salary Increase

Employees who meet the administrative, professional (including the salaried computer professional), and executive exemptions must be paid a minimum weekly salary of **\$913** in order to be exempt from the FLSA’s minimum wage and overtime requirements. *This is an increase of \$458 from the previous minimum salary requirement.*

The DOL’s rule also raised the salary threshold for the highly compensated employee exemption from \$100,000 per year to the 90th percentile of earnings for full-time salaried employees, which is \$134,004.

What Actions You Should Take

Review employee classifications to ensure that your “exempt” employees are **properly classified**. If they pass the salary basis and duties tests, but the employees are paid less than \$913 per week, then they must be considered “nonexempt” and must be paid at least the minimum wage and overtime. Employees who are paid a salary of at least \$913 per week and perform job duties that fall within one of the above categories (administrative, executive, professional, etc.) may be classified as “exempt.” If an exemption no longer applies (i.e., the employee no longer performs certain job duties, is not paid on a salary basis, or earns less than \$913 per week), the employee should be promptly reclassified as



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“nonexempt” and paid overtime in accordance with federal and state law. For employees who are properly classified as “exempt,” take this opportunity to make sure that their job descriptions accurately reflect their current responsibilities.

Identify which employees meet the administrative, professional, or executive exemption. Identify which employees are paid on a salary basis, meet the administrative, professional or executive exemption, and currently earn at least the previous minimum of \$23,660, but less than the new minimum of \$47,476 per year. The final regulations amend 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.

Compare the costs of raising employees’ salaries. Compare the costs of raising these employees’ salaries to meet the exemption criteria to what it would cost to reclassify them as “nonexempt” and pay them overtime when they work more than 40 hours in a workweek. If an employee’s salary is closer to the previous minimum (\$23,660) and they rarely work overtime, it might make sense to reclassify them as “nonexempt.” Conversely, if an employee’s salary is closer to the new minimum (\$47,476) and they frequently work overtime, you may consider raising their salary to maintain the exemption.

Consider the impact on internal pay equity. 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. Also remember that if the automatic annual increases become final, you would need to review and adjust “exempt” employees’ salaries each year. You may also want to consider state equal pay laws, such as in [California](#) and [New York](#), which have both recently passed/enhanced legislation requiring employers to provide equal pay to men and women.

Consider policies you have in place for “nonexempt” employees. With regards to employees for whom you decide to maintain their current salaries and reclassify as “nonexempt,” consider how your timekeeping, overtime, telecommuting, mobile device, meal and rest breaks, training, and travel policies will impact them. Also consider the impact of different pay deductions that will apply to these employees. Put together a training and communication plan to educate those employees regarding your new expectations and what the reclassification will mean to them and their status within the company. Clear communication is imperative.

For more information, [register](#) for the May 20th webinar, [New Overtime Rules Are Published: What Now?](#)

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