

## What Employers Need to Know About the New Final Rule: Overtime

On May 18, 2016, President Obama and Secretary Perez announced the publication of the Department of Labor's (DOL) **Final Rule regarding the Overtime Regulations**<sup>1</sup> (**Final Rule**, also known as Overtime for White Collar Workers), which simplifies and modernizes the nation's overtime regulation to ensure that extra work means extra pay. It will affect over 4 million workers within the first year of implementation. This article outlines the key provisions of the Final Rule, and what you should consider as the regulations are implemented. The ultimate decision is up to the employer to decide which options work best for your current business situation.

### When is the new overtime rule effective?

The effective date of the Final Rule is December 1, 2016. On that day, the new standard salary level (\$913 per week or \$47,476 per year) and the highly compensated employees (HCE) total compensation requirement (\$134,004 per year) will take effect. Future automatic updates to those thresholds will occur every three years, beginning on January 1, 2020.

### What are the key provisions of the Final Rule for executive, administrative and professional (EAP) employees?

- Sets the standard salary level at **\$913 per week or \$47,476 annually** for a full-year worker,
- Sets the total annual compensation requirement for **highly compensated employees (HCE)**, subject to a minimum duties test, to **\$134,004**, and
- Establishes a **mechanism for automatically updating the salary and compensation levels every three years**.

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.

**What are the requirements to be an exempt employee (not subject to overtime) under the regulation?** Employees whose jobs are governed by Fair Labor Standards Act (FLSA) are either "exempt" or "nonexempt". Nonexempt employees are entitled to overtime pay. Exempt employees are not.

- Employee must meet the salary level test, the salary basis test and the duties test.
  - Employee salary must be above the \$47,476 or \$134,004 threshold.
- Employee must meet the job duties test.
  - The job duties test is branched out into Executive, Administrative, and Professional (EAP) duties. The employee must meet the duty requirements under one of these exemptions.
  - **Executive** job duties include:
    - Regularly supervise two or more other employees,
    - Management as the primary duty of the position,
    - Some input over job status of other employees. (hiring, firing, promotions, assignments)
  - **Professional** duties is work that is:
    - Predominantly intellectual,
    - Requires specialized education,
    - Involves the exercise of discretion and judgment.
  - **Administrative** duties are:
    - Office or non-manual work.
    - Directly related to management or general business operations of the employer.
    - Primary component of which involves the exercise of independent judgment and discretion.

### What has not changed?

- **Duties Test.** The DOL has not made any changes to the duties test for the EAP exemption.
- **Timekeeping Requirements.** No changes have been made to the regulations governing how employees are to record or report hours worked. However, if employees are reclassified as exempt, they may have to comply with timekeeping rules that have not been previously applied.

- **Regulations Regarding Part-Time Employees.** No changes have been made to the regulations to accommodate workers who perform *exempt* duties on a part-time basis. Even if an employee only works two days a week, he or she must earn the full minimum salary level of \$913 per week in order to be considered exempt.

**State Law Considerations.** State laws may still provide greater protections than the FLSA, and state law exemptions may be more restrictive than the EAP exemption.

### **What are the options as an employer?**

- Raise the employee's salary at or above \$47,476 (or \$913 a week) and keep employees exempt from overtime.
  - This works for those employees who have salaries close to the new salary level and work regular overtime.
- Pay overtime in addition to the employee's current salary, if necessary.
  - Overtime pay (time and a half) is required for any work over 40 hours over a 7 day period.
  - This is an option for those who typically work fewer than 40 hours, but have occasional spikes requiring overtime.
- Evaluate and realign hours and staff workload.
  - Ensure the workload distribution, time, and staffing levels are properly managed for those employees whom earn less than the salary threshold (\$47,476).
  - Employers may decide to hire additional workers to reduce or eliminate a need for overtime.
- Or, implement a combination of the three options listed above.

### **Will newly overtime-eligible employees have to record their hours on a daily basis or "punch a time clock"?**

No. Overtime-eligible workers are not required to punch a time clock. The FLSA requires that employers keep certain records for each nonexempt worker. That's so workers can be sure that they get paid the wages that they earn and are owed. For employees with flexible schedules, they are not required to sign in each time he/she starts and stops work. The employer could allow each employee to just provide the total number of hours worked each day, including the number of overtime hours, by the end of each pay period.

### **What steps should I take now?**

Now that the DOL has finalized its rule, employers should assess their workforce to determine the extent to which any changes will need to be made in order to remain compliant after the December 1, 2016, effective date. Here is what you should be doing now: 1) Identify employees who may be impacted and 2) Assess whether changes are needed and what types of modifications are possible. Employers with employees affected by the changes have several options available:

- Reclassifying employees
- Raising pay to retain the exemption
- Restructuring

Employers should develop a communication plan for all employees helping them understand the changes. Your human resource department should also review policies and practices such as overtime work and current classifications. Getting started now will ensure changes are made by the effective date of December 1, 2016.

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<sup>1</sup>For a copy of the final rule and additional materials from the Department of Labor, see: <https://www.dol.gov/whd/overtime/final2016/>.

Check out some Final Rule examples at: <http://www.cdscpa.com/online-resources/> Click on » Payroll » Final Rule Examples

NOTE: This information is issued to provide you with general information about the Final Rule. Do not apply this general information to your specific situation without additional details. Be aware that the laws contain varying effective dates and numerous limitations and exceptions that cannot be summarized easily. For details and guidance in applying the Final Rule: Overtime to your individual circumstances, please contact us at (888) 388-1040.