

# Final Rule: Overtime Q & A

## 9-12-16 Webinar

Below are the questions we received following the webinar on 9-12-16.

### **Q. Does it make any difference if the jobs are seasonal in how we apply the regulations?**

**A.** Unfortunately, it does not matter if the job is seasonal. The exempt status is determined on a workweek basis, not on an annual basis. Therefore, to claim one of the Executive, Administrative or Professional (EAP) exemptions, you must pay that employee at least \$913 per week.

### **Q. What is considered full-time in Minnesota? We have a part-time employee that is working 29 1/2 hours a week; would she be considered full-time if we bumped her to 32 hours a week?**

**A.** Whether a worker is full-time or part-time, the standard salary level to qualify for the exemption will be \$913 per week. Minnesota does not dictate how many hours a full-time employee works.

### **Q. How do we decide who is highly compensated?**

**A.** Starting 12/1/16, a Highly Compensated Employee (HCE) is an employee that receives at least \$134,004 per year, performs office or non-manual work and customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative, or professional employee.

### **Q. The HCE increase does not make sense to me. Once they are paid over the \$47,476 per year, aren't they no longer subject to the overtime rules or is this a completely different class of employees?**

**A.** There is a separate exemption for an HCE. You only have to meet one of the exempt duties of an EAP employee and be paid \$134,004 or more a year.

### **Q. Can you review the HCE dollars for 2016 and 2017? We understood it was \$120,000 for 2016?**

**A.** \$120,000 HCE is the dollar amount for 401k purposes for 2016. The HCE exemption for the purposes of determining an employee's exempt status will be \$134,004 starting 12/1/16.

### **Q. Would you say that insurance sales employees would qualify as an outside sales employee exemption?**

**A.** It depends on whether or not the insurance sales person is customarily and regularly engaged away from the employer's place or place of business. If they are regularly spending time in the company's office meeting with clients, they would not qualify. Please visit the following link for further information from the U.S. Department of Labor (DOL) on this matter. [https://www.dol.gov/whd/opinion/flsa/2009/2009\\_01\\_16\\_28\\_flsa.htm](https://www.dol.gov/whd/opinion/flsa/2009/2009_01_16_28_flsa.htm)

**CDS** [www.cdscpa.com](http://www.cdscpa.com)

CONWAY, DEUTH & SCHMIESING

Call us toll-free at (888) 388-1040.

Visit our website:

**CDS:** [www.cdscpa.com](http://www.cdscpa.com)

#### **LOCATIONS**

Willmar  
Benson  
Morris  
Litchfield  
St. Cloud-Sartell

**Q: Are self-employed individuals who are greater than 2% shareholder employers subject to the minimum salary requirements?**

**A:** Business owners – defined in 29 CFR 541.101 as “any employee who owns at least a bona fide 20 percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type organization, and who is actively engaged in its management” - are not subject to the salary level test requirement. These bona fide business owners would not be affected by the Final Rule’s increase to the standard salary level.

Check out our website at [www.cdscpa.com](http://www.cdscpa.com) for the latest on Final Rule: Overtime or contact our office toll-free at (888) 388-1040.