

Fair Labor Standards Act

Part 541 "Overtime" Final Rule

Presentation for the Interstate Labor Standards Association
August 2016

This presentation is for general information and is not to be considered in the same light as official statements of position contained in the Department's regulations.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR



New Overtime Rule Overview

- March 2014 - Presidential Memorandum
- July 2015 – Notice of Proposed Rulemaking
- May 23, 2016 – Final Rule Published
- December 1, 2016 – Final Rule Effective Date

New Overtime Rule Overview

- Simplify and modernize the regulations
- Prevent a future erosion of overtime protections and ensure greater predictability
- Strengthen overtime protections for salaried workers and provide greater clarity

“White Collar” Exemptions

The most common FLSA minimum wage and overtime exemption -- often called the “EAP” or “white collar” exemption -- applies to certain:

- Executive Employees
- Administrative Employees
- Professional Employees

Three Tests for Exemption

Salary Basis

Salary Level

Job Duties

Salary Basis Test

- Regularly receives a predetermined amount of compensation each pay period (on a weekly or less frequent basis)
- The compensation cannot be reduced because of variations in the quality or quantity of the work performed
- Need not be paid for any workweek when no work is performed
- Does not apply to certain named professions

Executive Duties

- Primary duty is management of the enterprise or of a customarily recognized department or subdivision
- Customarily and regularly directs the work of two or more other employees
- Authority to hire or fire other employees or recommendations as to the hiring, firing, advancement, promotion or other change of status of other employees given particular weight

Administrative Duties

- Primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers
- Primary duty includes the exercise of discretion and independent judgment with respect to matters of significance

Professional Duties

- Primary duty is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction OR
- Primary duty is the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor

Computer Related Occupations

An employee in a computer related occupation can qualify for exemption if the employee receives either:

- A guaranteed salary or fee of **\$913** per week or more, or
- An hourly rate of not less than \$27.63 per hour

And the employee:

- Is employed as an analyst, computer programmer, software engineer or other similarly skilled occupation, and
- The primary duty must be in design, development, creation, systems analysis etc. (as defined in the regulations).

New Overtime Rule

Standard Salary Level and Highly Compensated Employees

- Standard salary level - pursuant to 29 CFR 541.600

<u>Current</u>	<u>Effective 12/1/2016</u>
\$455	\$913 per week
40 th percentile of earnings for full-time salaried workers in the lowest-wage Census region (currently the South)	

- Highly Compensated Employee (HCE) - pursuant to 29 CFR 541.601

<u>Current</u>	<u>Effective 12/1/2016</u>
\$100,000	\$134,004 per annum
90th percentile of earnings for full-time salaried workers nationally	

New Overtime Rule

Nondiscretionary Bonuses

- Nondiscretionary bonuses and incentive payments (including commissions) are forms of compensation promised in advance to employees (e.g., bonuses for meeting set production goals, retention bonuses, and commission payments based on a fixed formula).
- May be used to satisfy up to 10% of the standard salary level.
 - Minimum of 90% (approx. \$822) of standard salary level must be paid as a weekly salary.
- Payments must be paid on a quarterly or more frequent basis. Employers may also make catch-up payments – see our website for more info.

New Overtime Rule Automatic Updates

- Every three years beginning January 1, 2020, the standard salary and annual compensation levels will be automatically updated.
- At least 150 days before the effective date, the Secretary will publish a notice in the Federal Register of the updated salary and total annual compensation amounts that will be required.

Additional Information

Other resources include:

- New Overtime Rule
- State by state breakdown of estimated impact
- Summary of the rule's economic impact study
- Guidance documents, including for business, small business, and non-profit employers
- Fact sheets
- Frequently Asked Questions
- Recording of full technical webinar presentations
- Call or visit the nearest WHD Office
 - Visit the WHD homepage at:
www.dol.gov/whd/overtime/final2016
 - Call the WHD toll-free information and helpline at: **1-866-4US-WAGE** (1-866-487-9243)